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IN THE
United States Circuit Court
of Appeals
FOR THE NINTH CIRCUIT

No. 2905

CLALLAM LUMBER COMPANY, a Corporation,
Appellant,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Clifford
L. Babcock, Treasurer, Appellees.

No. 2906

CHARLES H. RUDDOCK and TIMOTHY H. McCARTHY,
Appellants,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Clifford
L. Babcock, Treasurer, Appellees.

No. 2907

CLALLAM LUMBER COMPANY, a Corporation,
Appellant,

vs.

CLALLAM COUNTY, a Municipal Corporation, and Herbert
H. Wood, Treasurer, Appellees.

No. 2908

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Appellants,

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CLALLAM COUNTY, a Municipal Corporation, and Herbert
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ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF
WASHINGTON, NORTHERN DIVISION.

Brief of Appellees

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STATEMENT OF THE CASE

These cases are appealed from decrees of the United States District Court for the Western District of Washington, Northern Division, which dismissed as without equity bills of complaint to enjoin the collection of a portion of the taxes for the years 1913 and 1914 levied by Clallam County upon timber lands of the appellants. The facts and the principles of law applicable thereto are, in the main, the usual ones involved in the suit to restrain the collection of a tax for alleged fraudulent conduct upon the part of the assessing officers. No novel principles of law are urged upon this court, nor any novel applications of established principles. Succintly stated, the charge in the bills of complaint is, that all the inhabitants of Clallam County are members of a conspiracy to defraud the appellants by assessing the timber lands of appellants and other owners of timber lands in the interior of Clallam County at eighty per cent of their true and fair value in money, while the personal property in Clallam County, the farm lands, the real estate in Port Angeles and the timber lands known as the "Straits" timber all are assessed at from ten to forty-five per cent of their value; and that the assessments upon the lands of the appellants

and upon all the other property in Clallam County are made in the execution of that fraudulent conspiracy. The main geographical features of the County are alleged in the bills and substantially admitted in the answers. In the absence of such pleading, however, the court would judicially notice that Clallam County is a long, narrow county, bordered on the East and South by Jefferson County, on the West by the Pacific Ocean and on the North by the Straits of Juan de Fuca. The eastern end of the county (such of it as is settled) is agricultural, and contains but one town, Sequim, with a population of approximately 450. The only other town is Port Angeles with about 4400 people, which lies on the Straits, about one-third of the distance from the eastern line of the county. It is to be noted that Clallam is a sparsely populated county, a large portion of it being a National Forest Reserve, consequently not upon the tax rolls. It contains 529,920 acres of taxable land, of which but 18,072 acres are cleared and improved. (Record, page 284). The remainder is either timbered land or logged-off land. If a rule be laid North and South along the West line of Range 8, which runs a few miles West of Port Angeles, all of the county West of that line will, roughly, comprise the timber belt involved in this suit, plaintiffs apparently conceding that the timbered lands in the eastern portion of the county

are fully and fairly assessed. Appellants are pleased to divide this timber belt into the "Straits" timber, so-called, and the "Interior" timber. All co-called "Straits" timber is included within the zone marked No. 1 on the map appended to appellants' brief and is described in paragraph 7 of the bill of complaint in cause number 2905. All the rest of the timber west of Range 8 is referred to by the appellants as the "Interior" timber. The charge in effect is that the so-called "Straits" timber has a market value of \$2.00 per thousand stumpage and, being assessed at ninety cents per thousand is, therefore, given a forty-five per cent assessment. Appellants contend that the bulk of their "Interior" timber is worth but half as much, namely: \$1.00 per thousand feet stumpage, and that being assessed at eighty cents per thousand, it bears an eighty per cent assessment.

The total assessment of the county in 1914 was \$14,576,197, of which \$10,062,205 was the assessment on the timber lands (Exhibit 21). According to this exhibit city real estate was assessed at \$2,114,957. All unimproved land except timber land was assessed at \$901,475, and all improved land, together with the improvements thereon, at \$746,305.

Reducing these figures to round numbers the assessment is analyzed as follows:

Total County assesment for 1914.....	\$14,600,000	
Assesment of City lots...	\$2,100,000	
Assessment of wild land	900,000	
Assessment of improved land	750,000	
<hr/>		
Total assessment of all real estate except timber	\$3,750,000	
Assessment of timber land	10,000,000	
<hr/>		
Total assessment of all real estate	\$13,750,000	13,750,000
<hr/>		
All other property approximately.....	\$850,000	

The bills contain much language *in terrorem* attacking the assessment of goods, wares and merchandise and other personal properties without specifying them. The only personal property the assessment of which was attacked by evidence was the assessment of the banks, of the shingle mills, and of the mill of the Puget Sound Mills & Timber Company and the plant of the Olympic Power Company. No attack has been made upon the assessment of live stock or animals of any kind, implements, tools, vehicles, merchandise, stocks of goods, automobiles, or any other form of personal property save those mentioned. The property of the Puget Sound Mills & Timber Company, according to ap-

pellants' witness Pollock (Record, page 680), was valued at \$655,000. According to the same witness the total valuation of all the shingle mills in the county was about \$55,000. (Appellants' Brief, page 173). The total valuation of the banks in Clallam County is \$85,000. (Appellants' Brief, page 174). In the judgment, therefore, of the witnesses for the appellants, personal property with an actual value of \$795,000 would, to a certain extent, be under-assessed. At a fifty per cent valuation this property should appear on the assessment rolls at \$397,500, if appellants are correct. The banks are assessed at \$10,200. (Record, page 785) The shingle mills are assessed at \$17,140. (Appellants' Brief, page 173), and the property of the Puget Sound Mills & Timber Company at \$83,435, or a total of approximately \$111,000. If the court should sustain the entire contention of the appellants as to the assessment of personal property, there would be added to an assessment of over fourteen and a half million dollars but \$286,500. This would make a difference of about 2%. *De minimis lex non curat.*

These items of personal property were not in fact under-assessed, as will be shown later.

We have left, therefore, the assessment of the real estate which covers approximately ninety-five per cent of the taxable property in the county. The

unimproved land known as "wild land" is valued at approximately nine hundred thousand dollars. No testimony concerning the valuation of that land was introduced by either side. It is consequently eliminated. The assessment of farm lands and of city lots was attacked. The assessment of timber in the so-called "straits" zone was also attacked. Just as real property, carrying 95 per cent in value of the total assessment, is the most important factor in it, so the timber lands are the most important part of the real estate assessment. The assessment of the timber lands constitutes five-sevenths of the entire assessment of the county, and if the assessment of the timber has been fairly and honestly made as between the owners of the "straits" timber and of the "interior" timber, then the most important and really the decisive factor in the case shall have been definitely established. This is true, because the uniform testimony of practically every witness in the case, for appellants as well as for the county, establishes the market value of the timber in the "straits" zone as two dollars per thousand feet stumpage. It is assessed at ninety cents per thousand feet, which is a forty-five per cent assessment.

If therefore we find that the "interior" timber is honestly and fairly assessed in the same proportion as the "straits" timber, then we have estab-

lished five-sevenths of the entire assessment as having been fairly and honestly made.

The class of property next in importance is city lots which are assessed at over two million dollars, or more than one-seventh of the total assessment. If this property shall also be found to have been fairly and honestly assessed, then, with the timber lands, six-sevenths of the assessment will have been disposed of.

The third class of real estate left to be considered is the farm lands. Appellants have not discussed a single sale of real estate, with examples of which the evidence is replete. We shall present as briefly as possible every sale of city lots or acreage which has been produced for this record. The assessment of the property so sold will be compared with it, and after the court shall have considered the actual sales of the property side by side with the assessment, it will be understood why appellants neglected to perform this service.

We will finally analyze the testimony relating to the assessment of personal property and property of the Olympic Power Company.

Examination of those phases of the cases which concern the details of the assessment of the various classes of property referred to will demonstrate the absurdity of the appellants' charges of fraud and conspiracy.

In the year 1908, for the purpose of securing an accurate basis for the valuation of property for purposes of taxation, Clallam County caused to be made a cruise of all of the timber lands in the county. This cruise was not completed until the year 1914, but in its partially completed state it was used by the assessor in making his assessment of the timber lands of the county for the year 1912, upon which the assessment for the year 1913 was based, and also in making his assessment for the year 1914. This cruise became a part of the county records and is in evidence in these cases as Defendants' Exhibits 19 and 20. The county also made a survey of all of the other lands except town lots, which became a part of the county records and is in evidence in this case, as Acreage Grade Books, Defendants' Exhibits 22 and 23. The timber cruise is so minute, detailed, painstaking and careful that it is virtually a tree count of the timber lands of the county. It shows in detail all of the elements or factors which enter into the value of timber lands. As a result of the accurate information thus made available and the careful valuation of timber lands based upon that information, the taxes upon timber lands in the county were somewhat increased over former years.

In attacking the assessments for the years 1913 and 1914, the appellants had open to them two

methods of assault:—The first was to pay under protest the amount of the taxes assessed against them, and then sue to recover such excess as they might be able to prove unlawful; the second and easier method, because it did not involve the expenditure of so large an amount of money, was to pay into court the amount of a tax for each year based upon an assessment alleged by them to be a proper valuation of their timber lands, and to enjoin the collection of any amounts in excess of the sum so tendered. They chose the latter method.

At the outset of these cases they were confronted by two obstacles. The first was the official timber cruise, which has eliminated every possibility of controversy over the valuation of timber lands except the one element, market value, an element ultimately determined by taking into consideration all of the other factors shown by the cruise.

This cruise was made by Lou C. Duvall, a man whom appellants used as a witness in the lower court. The correctness and accuracy of this cruise, and its acceptance, are matters of record. One witness (Rixon) was asked to give a description of the general physical contours of the land in question, when the following took place:

MR. FROST. If Your Honor pleases, we desire to interpose another objection. I don't want to be

technical, but these plaintiffs have pleaded a county cruise. They have estopped themselves from in any way denying or assailing the county cruise. They are bound by it; because they alleged affirmatively in their own pleadings that the county cruise shows the quantity and character of their timber.

THE COURT. You don't object to the county cruise?

MR. PETERS. No, your Honor. (Record, page 102).

The witness (Rixon) being interrogated as to the character of the timber in these zones, said: "The character and quality of the timber in Zone 1 varies considerably." At this point in the testimony the following occurred:

MR. FROST. I would like to reiterate that counsel has admitted in open court that they accept and adopt, and do not deny the county cruise.

MR. PETERS. Yes, I think we are both bound by that.

(Record, page 107).

The second obstacle was the fact that courts of equity, either state or federal, are not integral parts of the taxation system of the state, it being only in the exceptional cases of fraud or the avowed adoption of palpably wrong principles of valuation by

the assessing and equalizing officers that the courts of equity will interfere in matters of taxation.

“The law is thoroughly settled that in such cases the courts have nothing whatever to do ‘with anything less than fraud, or a clear adoption of a fundamentally wrong principle’ in the making of the assessment and levy.”

Washington Waterpower Co. vs. Kootenai County, 210 Fed. 867 (868).

“The levy of taxes is not a judicial function. Its exercise, by the constitutions of all the states, and by the theory of our English origin, is exclusively legislative.”

State Railroad Tax Cases, 92 U. S. 575; 23 Ed. 663 (674).

“The determination of the value to be fixed on property liable to be assessed ‘is not, in the absence of fraud, subject to the supervision of the judicial department of the state.’ *Keokuk & H. Bridge Co. vs. People*, 185 Ill. 276 * * *”

Burton Stock Car Co. vs. Traeger, 187 Ill. 9; 58 N. E. 418.

“In the absence of any evidence or sufficient evidence to show fraudulent, arbitrary, capricious or collusive conduct on the part of the assessor, the valuations of the assessor are final and cannot be disturbed.”

Hammond Lumber Co. vs. Cowlitz County, 84 Wash, 462 (465).

“It was early held by this court in *Andrews*

vs. King County, 1 Wash. 46; 23 Pac. 409; 22 Am. St. 136, that courts of equity will not interfere to correct errors in judgment as to valuation, as 'value is a matter of opinion, and when the law has provided officers upon whom the duty is imposed to make the valuation, it is the opinion of those officers to which the interests of the parties are referred.' "

Collins vs. King County, 80 Wash. 251 (253).

"For excessive assessments, unless fraud is established by the proof or may be presumed from the circumstances, equity furnishes no relief and the remedy must be such as the statute has given."

Templeton vs. Pierce County, 25 Wash. 377 (378).

"It is well settled that a suit to enjoin the collection of a tax will not be entertained in courts of equity—at least, in those of the United States—in which the sole ground set forth in the bill is that the tax is illegal or excessive."

Taylor vs. Louisville & N. R. Co., 88 Fed. 357 (374).

"If property has been assessed higher than it should have been through a mere error of judgment on the part of the officers making the valuation, the courts are powerless to rectify the error, and can only relieve against

fraud. *Keokuk & Hamilton Bridge Co. vs. People*, 145 Ill. 596; 34 N. E. 482."

People ex rel. Thompson vs. Bourne, 89 N. E. 690 (691); 242 Ill. 61.

"Mere differences of opinion between the assessing officers and the owner of the property or between the courts and the assessing officers will not give a court of equity jurisdiction to declare fraudulent even what such court thinks is an excessive valuation."

Sanitary Dist. of Chicago vs. Gifford, 100 N. E. 953 (956).

"The constitution expressly prohibits the ascertainment of such value by any other person than a person elected or appointed by the legislature. Hence the courts have no power to fix the valuation of property for taxation."

Burton Stock Car Co. vs. Traeger, 187 Ill. 9; 58 N. E. 418 (419).

By reason of the very particularity with which the elements or factors entering into the valuation of the timber lands are shown in the cruise, the first obstacle was rendered insurmountable. As a basis for their suits, therefore, plaintiffs had recourse to an expedient by which they deemed it possible to produce an artificial foundation for these suits, taking advantage of certain peculiar and abnormal

conditions of the real estate market obtaining in Port Angeles during the latter part of the year 1912 and the early part of the year 1913.

At the time the assessment of property in Clallam County for the year 1912 was made, the laws of Washington provided that all real property in the state subject to taxation should be listed and assessed biennially, on every even numbered year, with reference to its value on the first day of March preceding the assessment. (Remington & Ballinger's Code, Vol. 2, Sec. 9101). It was also provided that the assessors should list all real property according to the largest legal subdivision, as near as practicable. (Remington & Ballinger's Code, Vol. 2, Sec. 9113). It was further provided that all property should be assessed at its true and fair value in money, and that the true cash value of property should be that value at which the property would be taken in payment of a just debt from a solvent debtor, also, that in assessing any tract or lot of real property, the value of the land exclusive of improvements should be determined, and the value of all improvements and structures thereon. (Rem. & Bal. Code, Vol. 2, Sec. 9112).

The specific provisions of this latter statute have never been adhered to by assessors of the State of Washington, and they have uniformly assessed

property at less than its true and fair value in money. This practice was universal in the State, and had, at least inferentially, judicial sanction, the courts holding that the principal requirement of the law to be observed by the assessors in this regard was the constitutional requirement of uniformity.

In 1913, Sec. 9112 Rem. & Bal. Code was amended so as to provide that all property should be assessed at not to exceed fifty per cent of its true and fair value in money. (Laws of Washington, 1913, page 438, Sec. 1). The assessment of the property of Clallam County for the year 1912 was made upon the basis of approximately fifty-two per cent of actual value, under the old statute, and the assessment of the same property for 1914 was made upon the basis of fifty per cent, in strict accordance with the letter of the amendatory statute.

Between the time of the assessment of the year 1912 and the assessment of 1914, however, there transpired the peculiar and abnormal conditions to which we have previously adverted, which was confined principally to the town of Port Angeles. That town and its citizens, during the period from the early part of December, 1912, to the middle of the year 1913, had been made the

hapless victims of a real estate exploitation conceived and engineered by Seattle real estate operators, which produced a purely artificial and highly abnormal condition in the real estate market. The details and methods of operation of this boom are set forth in the testimony of the witness Ware at pages 142-a and 142-b of the record; in the testimony of the witness Aldwell, page 179 of the record; in the testimony of the witness Lauridsen, pages 422, 430 to 433 of the record; in the testimony of the witness Haggith, pages 439 to 440 of the record; and in the testimony of the witness Levy, pages 593 and 594 of the record. The actual character and the results of this boom as they affected, not realty *values*, but realty prices, in Port Angeles, are analyzed elsewhere in this brief, but the boom itself, and the artificial and inflammatory conditions produced by it and accompanying it were eagerly seized upon by the appellants as affording evidence of a disparity between the actual and assessed valuations of Port Angeles real estate sufficient to make a showing in court.

By reason of the very particularity with which the elements or factors entering into the market value of timber lands were shown in the timber cruise of the county, and the consequent impossibil-

ity of successfully maintaining their suits upon charges disputing the accuracy of the cruise, it became necessary for the plaintiffs, in order to obtain and hold a standing in court, to set up in their pleadings and to establish in their proof the existence of some one of the exceptional states of fact or conditions which under the decisions and recognized rules of equity will permit the intervention of equity courts in matters of taxation. One of the most familiar grounds of equity jurisdiction is fraud, much favored by litigants seeking the jurisdiction of equity courts in matters of taxation, and accordingly the plaintiffs based their bills of complaint upon this ground and alleged actual fraud, not constructive, upon the part of the assessing and equalizing officers of Clallam County.

This charge is made in such definite and specific form in the bills that one of the judges of the District Court based his decision denying the defendants' motion to dismiss squarely upon the allegations of fraud in the bills:

“The facts recited in the complaint are not mistakes of fact or errors of judgment on the part of the assessing and equalizing officers, but actual fraud is charged, and confederation and cooperation with relation to the

excessive valuation and assessment of the lands of the complainant."

(Judge Neterer's memorandum decision on motion to dismiss, Record, page 48).

The appellants, therefore, through their counsel, Earle & Steinert (Record, page 246), some time prior to bringing these suits, procured one E. H. Grasty to go to Port Angeles to "ferret out," to use his own expression (Record, page 218), such conditions in Port Angeles as would afford an apparent basis for the allegations later made in the bills of complaint in the actions brought by the appellants. It is principally upon the operations of this man that these cases are founded.

Notwithstanding eighteen assignments of error alleged in numerical sequence and twenty-three subdivisions of argument, the appellants' brief follows no logical order of referring argument to assignments of error; and because an attempt to follow appellants' argument, as presented in their brief, would merely tend to make confusion worse confounded, we prefer to make to the court a presentation of the appellees' theory of the cases, founded upon facts established in the record rather than upon the fictions assumed throughout the course of the appellants' arguments, reserving extended comment upon the plaintiffs' argument until

the close of this brief. We will, therefore, divide our argument according to the following analysis:

I.

The Timber Assessment.

- (a) Assessment by zones.
- (b) Comparative value of "Straits" and "Interior" timber.
- (c) Railroads.
- (d) Hemlock.

II.

Real Estate Assessment.

- (a) Farms and Sequim lots.
- (b) Port Angeles lots.

III.

Personal Property Assessment.

IV.

Assessment of Olympic Power Co.

V.

The Alleged Conspiracy.

VI.

Answer to Appellants' Contentions.

THE TIMBER ASSESSMENT.

Appellants first assail the assessments of 1913. The tax rolls of that year show a total of 529,280 acres of taxable land in the county, of which 370,191 acres were timber lands, and but 15,300 acres cultivated or improved lands, the remainder, 143,789

acres, being unimproved or "wild" lands, consisting of logged-off lands and lands not valuable for standing timber. The total assessment of the county was \$12,354,760, of which \$8,902,850, or approximately three-fourths, fell upon timber lands. (Defts. Ex. 21; Record, p. 284.) This is a condition which constitutes the assessment of timber lands the most important factor in the comparison of the assessments of appellants' with that of other property in the county. Then, too, the weight of authority holds that the taxpayer may not be heard to complain if his holdings are assessed ratably with other *like* property:

"If property, even if overvalued, is assessed in the same proportion as other *like* property within the jurisdiction of the assessing officer, and the system of valuation adopted operates equally on all other property, the constitutional provision as to uniformity of taxation is complied with."

Edison Elec. Ill. Co. vs. Spokane County, 22 Wash. 168.

"It was no ground for relief against excessive valuation of property that the assessor had merely overvalued the property, if it appeared that his action was not arbitrary or capricious and the property had been assessed in the same proportion as other *like* property within the jurisdiction of the assessing officer."

Templeton vs. Pierce County, 25 Wash. 377, quoted and approved in *Henderson vs.*

Pierce County, 37 Wash. 201, and again approved in *Hillman's etc. vs. Snohomish County*, 87 Wash. 58.

To enable the assessor and equalizing board to correctly appraise the taxable lands of the county, a cruise or survey of the timber lands was made (Defendants' Exhibits 19 and 20), a work which is monumental and which discloses all of the facts essential to an accurate appraisement. In fact, as we have previously stated, it amounts to a tree count of the timber standing upon each ten acres, giving in detail the amount in feet, board measure, the character and grade of each variety of timber, and showing the physical characteristics of the land upon which it stands—even to the exact elevation above sea level.

ASSESSMENT BY ZONES.

It is common knowledge, and a fact shown by the testimony of all of the expert timber witnesses testifying either on behalf of appellants or appellees, that the value of timber depends upon several factors, chief among which are the thickness of the stand, the character, grades and quality of the timber, the physical characteristics of the ground, and the ease or difficulty of logging, as well as its availability or remoteness. Considering these factors, the

assessor established "zones" or districts, placing different valuations upon the lands in each district.

"I exercised my judgment in establishing all these zones. In making the zones I took in the the surface of the country, the kind of timber and other characteristics that entered into the general topography of the country; everything concerning its physical character." (Testimony of John Hallahan, County Assessor, Record, p. 509.)

That such a distinction is not only proper, but necessary, is evidenced by the fact that appellants in their complaint plead a distinction and a difference in the valuation of timber lands in one locality as compared with their lands in other localities. It is clear that the assessor must make a distinction in his own mind, and having made it, it is a matter of no moment whether he retains it there or takes a ruler and indicates upon a map the lines separating the limits within which he recognizes, and must, if he is to make a fair assessment, recognize, a difference in valuation.

The creation of zones is a common practice in the State of Washington and has the approval of its Supreme Court in *Doty Lumber & Shingle Co. vs. Lewis County*, 60 Wash. 428, and *Simpson Logging Co. vs. Chehalis County*, 80 Wash. 425.

Appellants cite *Hersey vs. Board of Supervisors*, 37 Wis. 75. This case was relied upon by the tim-

ber owners in *Doty Lumber & Shingle Co. vs. Lewis County, supra*, and after receiving careful consideration by the Washington Supreme Court in so far as it affected the establishment of zones, was disapproved. An examination of the *Hersey* case will reveal the fact that it did not decide the point contended for by counsel in this case, the decision turning upon the failure of the assessor to comply with certain requirements of the Wisconsin statute. Then, too, it was decided in 1873, at a time when the zone system was a novelty in America.

The creation of zones is a European conception, having its original basis in fixing rates and fares of public service corporations. Its fairness having commended it to American common sense, it was adopted in this country and has been made use of in establishing fares of transportation companies, in regulating freight and other rates, and by the United States Post Office Department in the matter of parcels post; it is universally used in making special assessments for local improvements, and is generally applied to the assessment of property like timber lands, coal lands, etc.

During the trial of these cases the lower court commented upon this phase of the issues as follows:

“I am willing to assert that it seems perfectly reasonable to me that zones should be

established, I would not have the assessor go out and look at every tree and every limb on every tree. There has got to be a line drawn somewhere, so as to establish legal sub-divisions, or zones. It is all a matter of establishing zones some time, whether ten acres, or a million acres for them. It appears reasonable to me that zones should be established. But if counsel should make out that it was so arbitrary as to constitute constructive fraud he should have an opportunity to do it." (Record, p. 507.)

The memorandum decision of the trial court adverts to this phase of counsel's argument in a way that effectually disposes of it:

"While in one sense it may be said that the boundaries of the zones were arbitrarily fixed, in that a tree immediately upon one side of the boundary could not be said to be more valuable than one immediately upon the other, yet in principle it is not more arbitrary than to assess a man's farm at an even value per acre, disregarding possible differences therein. Plaintiffs' witnesses testified that the Merrill & Ring timber in the coast zone was worth twice as much as plaintiffs' in the two interior zones. This would indicate that there was, to their minds, such a difference as would warrant zone making. What the bounds of the zones should be, how large they should be made and the values to be given the timber in each would be matters of opinion.

I find that the creation of these zones was not unreasonably arbitrary.

C. B. & Q. Ry. Co. vs. Babcock, 204 U. S. 585;
Doty Lbr. & Shingle Co. vs. Lewis County, 60
Wash. 428;

Simpson Logging Co. vs. Chehalis County, 80
Wash. 245, at 248."

The determination of the dividing lines separating the groups of timber lands of different values must be made by the assessor, and his judgment thereon is conclusive, unless it is clearly shown by positive testimony to have been governed by fraud or caprice, and in this case there is not one scintilla of evidence tending to show that the creation of these zones was not necessary and proper. As a matter of fact an examination of the topographical map prepared by appellants' witness Rixon, introduced in evidence as "Plaintiffs' Exhibit B" (Record, p. 111), largely sustains the sound judgment of the assessor.

COMPARATIVE VALUE OF "STRAITS" AND "INTERIOR" TIMBER.

The attention of the court has been heretofore directed to the fact that Clallam is an undeveloped county, consisting chiefly of wild and timbered lands. In considering the assessments in these cases it should be borne in mind that it is the land, and not the timber, which bears the assessment, the amount, character and quality of the timber being, of course, one of the principle factors to be considered in ascertaining the value of a given tract of land. In making comparisons between their own holdings and those of other timber owners, appellants have confined their testimony to lands sit-

uated in the western half of Clallam County, thus tacitly, at least, admitting that there has been no discrimination so far as timber lands in the eastern portion of the county are concerned. Appellants have alleged (Record, p. 17) that upon the Straits of Fuca and immediately adjoining tide water there lie fine bodies of fir, spruce, cedar and hemlock timber; that this "Straits" timber, so-called, lies within the zone described in paragraph 7 of their complaint (which is Zone No. 1, as shown upon the plat attached to their brief), and that it is worth at least twice the true and fair value of that of appellants situated in the interior. That this contention has utterly failed will be amply sustained by an examination of the evidence adduced at the trial of the case.

The first witness on behalf of appellants, Theodore L. Rixon, scarcely qualified as an expert in timber values. He admitted that he had never engaged in the logging business or in dealing in timber or timber lands. (Record, pp. 108 and 109.) Being asked if he knew the value on March 1st, 1913, of the timber in Zone No. 1, he testified:

"Well, I do not know whether I can say—I do not know just exactly the price of logs in 1913. * * * The only way to arrive at the value of that timber would be what it would cost to log and what you would get for the

logs when they are put in the water, both. * * *
If I had the log values I could figure what their
actual worth was," etc.

The witness also testified (Record, p. 109), that so far as "booming" the logs was concerned, there would be the same difficulties for the "straits" timber as for the timber in the interior, so that that element in his judgment would make no difference in their value; that his valuations were based upon what logs would grade (Record, p. 110), and what logs would be worth in the market, "outside of the cost of hauling them in, or towage, or anything like that."

The witness plainly showed not only a lack of qualification as an expert, but clearly demonstrated the fact that he was not even endeavoring to testify to the value of standing timber, but was endeavoring to arrive at a log value based upon the prices of logs in the market at that time. It is so apparent that it is scarcely worthy of comment that the market value of lands cannot be measured by the price of logs which have been cut and placed in the market at any particular time. Logs are a perishable commodity—timber lands an investment.

Appellants' next witness, Eugene France, was undoubtedly qualified as an expert to testify to the value of timber lands, had he possessed the infor-

mation upon the facts essential to an honest judgment in these cases. Asked as to the value of timber in Zone No. 1, he said (Record, p. 113):

“Well, that timber that was handiest to the water and to the straits, it might be possible by logging to get \$2.00 a thousand for it. * * * Well, I am not acquainted with the conditions in that part of the country enough to say positively; but I would say that two dollars a thousand would have been a good price for it.”

On cross-examination (Record, p. 114) he says that he did not make a thorough examination, but passed through on the roads that were cut through the timber, and walked out in the timber in different places, but did not attempt to cruise it in different sections—they didn't have time; that he did not examine detailed cruises showing the quantity and quality of the timber. In other words, his judgment was rather an “off-hand opinion.” On further cross-examination, questioned by Mr. Frost:

“Q. (Mr. Frost.) Mr. France, would you put such observations as you have made, such investigations as you have made recently, and in the past concerning this matter up up against a complete, competent and reliable cruise?

A. Well, not if it were competent, complete and reliable. I would not; but I might investigate to see whether such was the fact or not.” (Record, p. 115.)

He could not identify any sections he went into. (Record, p. 116.) He admitted that as a matter of

fact he simply traveled over the road from Sappho to Clallam and back again in an automobile. (Record, p. 117.)

Thomas Bordeaux, the next witness for appellants, was conceded by appellees to be thoroughly qualified as an expert. Asked on cross-examination how extensive were his investigations and examination of the Lacey timber, he answered (Record, p. 119):

“A. Not very much, just merely going through the timber, following the county road, the wagon road.

Q. In other words, you went down through that country in an automobile and back, did you not?

A. Yes, sir.

Q. That was about all you looked at?

A. Yes, sir.

Q. That was the extent of your examination?

A. Yes, sir.

Q. And then you rode over the county road north to Clallam Bay?

A. Yes, sir.

Q. And back? (Record, p. 120.)

A. Yes, sir; we went to Forks Prairie from Clallam Bay, and then from Forks Prairie to Sol Duc Hot Springs.”

Then again:

“Q. And you did not go into the timber of the plaintiffs, Ruddock and McCarthy, at all?

A. No, sir; did not go down there.

Q. Have you made a careful and thorough examination of the cruise of timber with ref-

erence to the quantity and quality and the physical characteristics of it?

A. No, sir.

Q. You never have examined any cruise at all?

A. No.

Q. (Record, p. 121.) In other words, you are testifying upon the general impression that you got from riding along the public highway?

A. Yes, sir. * * *

Q. You don't know anything about the timber conditions and logging conditions in Clallam County except what you discovered on that occasion?

A. No, sir."

The next witness for appellants, John A. Rea, is also singularly unqualified as a timber expert. He accompanied appellants' witnesses Bordeaux and Draham (Record, p. 122); went through the timber on the wagon road. Is not prepared to compare the quality of appellants' timber with that in Zone 1, because he was not in the timber on the straits, and only knows of it by hearsay and common report. Admits that he would not buy the timber upon the examination he made (Record, p. 123); admits that he does not know anything about what the relative cost of logging of plaintiffs' timber would be; admits that he does not know what the stand of timber in there is, or what it grades, and says: "That has nothing to do with my notion." Admits that he does not know what the relative cost of logging the timber in the interior to the straits timber would be.

As a matter of fact, this witness displayed such a lack of knowledge concerning the subject, and particularly the timber in controversy, as to make his testimony scarcely worthy of consideration.

Appellants' witness Earl C. Duvall had charge of the cruising of the timber lands in the west end of Clallam County in 1911, 1912 and a portion of 1913. (Record, p. 124.) He had full charge of the cruise in the field, and full power to employ and discharge his assistants. He testified that the cruise was a fair, honest and conscientious cruise—the same cruise he would make for a corporation or an individual,—and that to the best of his judgment and of the men who did the work, the quality of the timber, the physical characteristics of the ground, the logging conditions and other things that are explained in detail until the cruise are recorded truthfully and accurately (Record, p. 126); concerning the value of timber, he said: “It is purely a speculative proposition away from transportation.” (Record, p. 125.)

Mark H. Draham, erroneously called “Graham” in the record, was admittedly qualified as a timber expert. He passed through the timber with Mr. Bordeaux and Mr. France—they didn't make a very thorough examination. (Record, p. 126.) As to its general character, it is a very good timber tract;

he did not examine very thoroughly the character of the land as a logging proposition; and as to whether it was broken or level; they only passed through the lands on the Hoko and Pysht on the county road; they made about the same examination of them as of the interior lands. The witness further testified as follows:

“Q. What, in your judgment, is a comparative—what is the comparison of the character and quality in the first place, and then of the value, if you know, of the lands on the straits, the Hoko and the Pysht lands, that you observed, and the interior lands of the plaintiffs?

A. (Record, p. 127.) I do not hardly think I am competent to answer that question. A person passing along the county road necessarily gets very little knowledge of a country. You do not see very far into the forests, and the only thing that you know is what you see; * * *

Q. What would be your judgment as to the difference in value as to the two, by reason of the character and quality such as you had occasion to observe it, and by reason of its location, the two classes of timber, that upon the straits and that in the interior?

A. That is a pretty hard question for a person to answer with the limited opportunity to examine the timber that we had,” etc.

On cross-examination (Record, p. 128) the witness testified that he would not be willing to buy this timber from the examination he made unless he bought it very cheap. He never examined the grades

of the timber down there. His knowledge was based upon what he saw on his trip and what he has always heard of it. He had not examined the cruises and was accepting the cruises and reports as being accurate, honest, careful cruises, his mind might be a great deal changed.

Appellants' witnesses uniformly testified to a value of \$2.00 per thousand feet for the standing timber in Zone No. 1, otherwise known as the "straits" timber, and a value of \$1.00 per thousand feet for the timber of appellants in the interior zones, and they uniformly admitted that this judgment or valuation was based, not upon an actual and thorough examination of the timber, nor upon a careful consideration of the cruise reports, but was largely a first impression based upon hearsay and an automobile ride which did not even extend down into the timber of the appellants Ruddock and McCarthy.

As a matter of fact, standing alone and uncontradicted, it would not be sufficient to overturn and set aside the judgment of the county assessor as sustained and approved by the county board of equalization.

Turning to a consideration of the testimony adduced by the appellees concerning these timber land values, we find an entirely different condition. Not

only do they exhibit a thorough familiarity with the subject, not only have they examined the detailed record of the survey or cruise of this timber, but to a large extent they have also made careful examination of the timber upon the ground, going miles from the wagon road, carefully locating section corners so as to identify the tracts examined, measuring trees, discussing their quality, studying the physical characteristics of the country, the nature of the soil, and even observing elevations with aneroid barometers. It will be found that the character, quality and exactness of their testimony completely outweighs that of appellants' witnesses, and more than sustains the sound judgment and honest purpose of the assessing officers of Clallam County.

The first witness for appellees was Alex Polson. He has been engaged in the lumber and logging business for over forty years, and in the State of Washington since 1879. (Record, p. 305.) He is familiar with the value of timber and timberlands throughout the Northwest and the State of Washington, particularly. He has examined the cruises of Clallam County, showing the timber of the appellants, also the county cruises of the "straits" timber in Zone No. 1, including the timber of the Puget Sound Mills & Timber Company, Merrill & Ring and the Goodyear Lumber Company. He is acquainted with

Lou Duvall, and would buy and sell on his cruise; says that in buying timber he does not make it a practice to go personally and inspect every tract of timber, but buys upon cruises of responsible cruisers. Considers the fir, spruce and cedar on appellants' land in the interior, on March 1st, 1912, as worth \$2.00 per thousand feet (Record, p. 308), and gave it the same value on the 1st of March, 1914; places the same value upon the Merrill & Ring, Goodyear and the Puget Sound Mills & Timber Company's timber in the "straits" zone. Testifies that he is putting in from half a million to seven hundred and fifty thousand feet of logs daily (Record, p. 309), and is operating over a logging road a distance of twenty or thirty miles; that he pulled 300,000,000 feet over a five per cent adverse grade. That in giving his testimony he took into consideration the necessity of constructing a railroad into the interior of Clallam County. (Record, p. 312.) He testified that the then present price of logs in the Puget Sound market was, on hemlock from six to seven dollars, spruce six to twelve, fir six, eight and eleven dollars per thousand feet; that the price on March 1st, 1912, was about one dollar higher on all grades. (Record, p. 314.) This witness testified that he had carefully examined the assessed value of timber and timber lands in the State of Washintgon because he makes it his business to annually attend the meet-

ings of the State Board of Equalization, and that the timber in Clallam County is assessed less per thousand feet than timber similarly located in Grays Harbor County, where timber 25 miles back from tide water is assessed at over one dollar per thousand. (Record, p. 315.) Hemlock being assessed at from 25 to 40 cents both in Chehalis County and Grays Harbor County. Asked if he acquainted himself with the interior lands of Lacey & Company in Clallam County (Record, p. 316) he testified that he had followed that up for ten years; that he has been through the lands—walked through them—for the purpose of seeing the country and to see the timber; that he was in that country over twenty years ago; that he has had cruisers' reports of all of that country for the past ten years. (Record, p. 317.) That he had his own cruisers' reports on the character of the country, not only on that land, but upon the entire forest reserve of the Olympic Mountains, and, generally, under the most gruelling cross-examination, shows a thorough and intimate knowledge, not only of the value of the timber lands, but of all matters connected with the logging and lumber business.

Wm. J. Chisholm, witness for appellees, has been a logger for forty-five years—in Michigan, Minnesota and Washington; eight years in the State of Washington. Is general manager of the Merrill &

Ring Logging Company (Record, p. 319); familiar with the manner and methods of logging in the Northwest, and with the cost of logging. Has had charge of the construction and operation of logging railroads. Has built 400 to 500 miles, while in the logging business. Is acquainted with the market price of logs in the Puget Sound markets and with the value of standing timber. Has been over certain portions of the timber lands lying along the straits in Clallam County, comprising the holdings of Goodyear, Merrill & Ring, the Milwaukee Land Company and the Puget Sound Mills & Timber Company. Has been across the appellants' timber, along the Sol Duc River and from Lake Crescent to Mora, and from Bear River to Clallam along the road; is acquainted with the topography of the country and familiar with the conditions attending upon the logging operations in the straits and in the interior.

Says (Record, p. 320) that the Lacey holdings in the interior belonging to appellants would log into the waters of the straits as cheaply as the timber in Zone No. 1, owing to the fact of its being in big holdings and the country being level in the interior zone. Has examined the county cruises of this timber; places a value on the interior timber of \$1.50 per thousand feet, and the same valuation on

the timber in the "straits" zone, on March 1st, 1912, and on March 1st, 1914. Undergoes a long and tedious cross-examination (Record, p. 320) in which he testifies in detail to the cost of constructing logging railroads that might become necessary to the removal of appellants' timber. That his valuation of \$1.50 per thousand was placed on fir only (Record, p. 326); that spruce and cedar ought to be worth more, in that country \$2.00 to \$2.50 per thousand feet for the cedar and spruce. That it would require practically as much railroad to log the straits timber as it would to log the Lacey holdings in the interior (Record, p. 327), and, generally, displays the most thorough familiarity with the whole subject.

Appellees' witness H. D. Newbury (Record, p. 331), testified that his occupation is logging, lumber, saw milling business, buying and selling timber; has been engaged in this from twenty-five to thirty years in Oregon and Washington. Has had the actual supervision of logging and lumbering operations. Has supervised the construction and operating of logging railroads; is familiar with methods of logging in the Northwest and the cost of logging, and the market price of logs in the Puget Sound markets for a number of years last past; is familiar with the value of standing timber in the State of Washington

generally. Has been upon and across a portion of the land of appellants in Clallam Coutny and has made a sufficient investigation to form an idea as to the conditions of conducting logging operations and the value of timber. Is also familiar with the lands lying along the straits and beyond Clallam Bay, and has examined the county cruises of Clallam County; that he examined the lands of appellants in August preceding the trial, and was in the timber about five days traveling around through it; was in the timber along the straits for a part of two days (Record, p. 332); that he used an aneroid barometer and took elevations here and there; made a careful study of the physical characteristics of the country in these respective zones. That he made investigations of the character and quality of the soil upon which the timber of the appellants stands, and carefully examined into the grade, quality and condition of the timber upon these lands. "Went out and traveled around through the timber and made an examination once in a while. I would take up an acre and count it and measure it and put a tape line on various trees and figure them out, just to look it over." Again: "In traveling through it we made an examination and passed our opinion on the different trees, and measured them and examined the timber." (Record, p. 333.) Testifies that the value of appellants' timber on March 1, 1912,

was from \$1.75 to \$2.00 per thousand feet; that the value of the "straits" timber would be about the same, and that the value of both would be the same in March, 1914, as in March, 1912. Examined the cruise books of Clallam County. (Record, p. 334.) During this examination had a map showing the location of appellants' timber; also had a map of the appellants' lands with them in the woods. Stopped for section lines and section corners so as to locate himself on the map, "because I couldn't tell anything about any map and where I was in the woods unless I could find a Government corner so I could read it and know where I was and what township I was in."

Asked by counsel for appellants:

"Q. In saying that the interior lands have, in your opinion, the same value as the lands on the exterior, you took into consideration the fact that there is a longer haul?

A. Yes, sir.

Q. And a greater cost of operation?

A. I differ with you. I take it that there is not. That the greater cost of operating is out there on the straits. After the plant is in there the only difference there is that you will operate cheaper on good lands than you will on the rough country. Where you are building roads up through the mountains and have quite steep grades, and high cliffs to take off, it costs more to actually put the logs on the railroad after the plant is in.
* * * * (Record, p. 335.)

Q. Did you go up in the hills; did you go very far away from the traveled road?

A. We were in township 29, range 13, in township 30, range 13—no, 29, range 12, and township 30, range 12. * * *

Q. You made an observation of all of those townships, did you?

A. Some, yes, sir; don't think that I went all through each one of those five acres, we went through some parts of it. * * * We would take up a few sections here and a few sections there, you know."

Believes that the interior can be logged off for less money than the timber in the straits zone. (Record, p. 337.) Says that railroads must be used in logging the "straits" timber as well as the timber in the interior. Says that the timber of the appellants along the Sol Duc River and between the Calawa and the Sol Duc were the best he had ever seen; as good as anybody has, and the logging conditions are fine. The witness did not think that persons driving in an automobile from Clallam to Forks and back and up to Sol Duc Hot Springs could form an accurate opinion as to the quality, quantity and character of timber within these zones.

Charles McGuire, witness for the appellees (Record, p. 339), is a timber cruiser, buyer and seller; is in the employ of one of the Eastern timber buyers, and has been for several years; is familiar with timber values in Western Washintgon, and with logging operations, and is interested in some.

Has made an examination and inspection upon the ground of appellants' timber lands, and has been over the timber of the Puget Sound Mills & Timber Company, the Milwaukee holdings, the holdings of Merrill & Ring, and the Goodyear holdings lying along the straits in Zone No. 1. What the witness saw of the appellants' timber along the Sol Duc valley is good timber, of good quality and good ground to log. This is in Zone No. 2. The timber lands in Zone No. 3 were more rolling and rougher, but the usual method would log it. The lands along the straits (Zone No. 1) are much more cut up with ravines and narrow canyons than back in the interior. In going through the timber lands both in the interior and on the straits, witness observed the character of the country, took aneroid readings of the elevations with a view to determining grades and cost of railroads. Says the land in Zone No. 2 on the Sol Duc River west of Forks would be agricultural land when logged off. In his judgment there would be but very little difference in the cost of placing the timber from the interior in the waters of the straits as compared with the timber in the straits zone. The appellants' timber in the interior on March 1st, 1912, was of the value of \$2.00 per thousand feet; the straits timber in Zone No. 1 was about the same value. Witness' opinion is based upon the county cruise and an examination of the

timber. (Record, p. 340.) He was in the timber five days. He had the cruises and had run a compass through that country. At different places stopped and picked up section lines and went out to the corners so as to be sure of the ground they were on, and took a general look around as to the quantity and quality of the timber that was standing. At one place they were probably six miles away from the wagon road. The valuation of the timber lands in 1914 would be about the same as in 1912, both as to the straits and as to the interior timber, namely, \$2.00 per thousand feet. Witness was not connected with the Merrill & Ring, or the Milwaukee Land Company, or the Puget Sound Mills & Timber Company, or the Lacey Timber Company.

On cross-examination the witness admitted that at one time he had worked for the T. M. Ring Logging Company and the Continental Timber Company—had been cruising for them, had done considerable cruising in Clallam County at Twin Rivers and Pysht River along the straits. Did some cruising in the interior in 1912 and 1913 for the Menasha Woodenware Company of Wisconsin; also cruised timber on the Hoko River in 1912. Had cruised timber on the straits for the Continental Timber Company and the Milwaukee Railroad Company

from two to three months. (Record, p. 341.) Had never been down in the interior timber except the six days referred to, of which practically all of the time was spent in examining the timber. Witness conducted logging operations in Idaho in 1893, 1894 and 1895. Was engaged in the mill business for about fifteen years; afterwards was with the Blue Mountain Lumber Company in Washington, in Asotin County, and is now logging in Jefferson County, near Port Ludlow. He looks after the cutting of the timber; the timber has to be transported over a railroad five and a half to six miles long. Witness went over the Clallam County lands with the other witnesses who testified for the appellees. He examined the county cruises before his inspection of lands, and afterwards.

This witness was also put through a long and gruelling cross-examination (Record, p. 342), an examination of which will disclose a thorough and complete knowledge of the logging and lumber business, methods of logging, cost of logging, cost of railroad construction, and, in fact, a familiarity with every factor essential to a correct appraisal of the market value of the timber lands in controversy. And, in concluding his testimony, he says that the timber of appellants is the best tract of timber he has ever seen. (Record, p. 355.)

C. I. Wanamaker (Record, p. 356), witness for appellees, lives in Port Townsend, Jefferson County. Is a merchant and interested in the logging business. Is also chairman of the Board of County Commissioners of Jefferson County. At one time conducted logging operations on the Hoko River at West Clallam in the so-called "straits" zone, or Zone No. 1, in Clallam County. His logs were put into salt water at the mouth of the Hoko River and into Clallam Bay. Has been engaged in the logging business in Washington for about eight years, and is familiar with logging methods. Has bought timber in Clallam County and has recently made investigation of appellants' land in the interior of Clallam County. Is familiar with the timber on the "straits" zone, and with the physical characteristics of the country of both the "straits" zone and the interior. Has been across from Clallam Bay over what is known as Burnt Mountain near Sol Duc, and around Forks. Has observed the physical characteristics of the country with reference to the construction of railroads, character and condition of the soil, etc. Believes that the logs can be put into salt water from both the interior and the "straits" zone at about the same cost. Testifies that he value of appellants' timber, known as the Lacey holdings, on the 1st of March, 1912, was from \$1.75 to \$2.00 per thousand feet, and about the same on March 1st, 1914; that

the timber in the "straits" zone at the same periods was worth substantially the same. Witness has made an examination of the county cruises of Clallam County. On cross-examination (Record, p. 357) witness states that he saw the timber of appellants in the interior in the month of August, preceding the trial—went down with other witnesses of appellees and made substantially the same sort of an investigation. Made an examination of the county cruises just before going out on the investigating trip. He did not look over the cruises of the "straits" timber at that time; he had looked them over in 1912 and 1913, on an entirely different occasion. At that time he was looking up timber to purchase himself; didn't examine the cruise of the Merrill & Ring timber in 1912 and 1913, but had been over that timber at that time. And, concluding his testimony (Record, p. 362), the witness said of the appellants' lands, "It is the best tract of timber I ever saw."

The qualifications of R. D. Merrill, witness on behalf of appellees were conceded by appellants. The witness is a member of the firm of Merrill & Ring, owners of an extensive body of timber in Clallam County. He is familiar with the lands in the "straits" zone, or Zone No. 1, and also with the appellants'. Witness says, "There are a num-

ber of elements or factors to be taken into consideration—the cost of operating, the quality of the timber; the cost of operating, of course, depends upon a number of conditions, which are the lay of the ground, quantity of timber per acre, the character of timber, whether there is water for donkey engines, or things of that kind, and the character of the soil.” “If the ground is broken, of course, it would make a difference in the cost of falling and hauling; if the ground is level it is less broken, easier to get to railroads, and easier to build railroads and get the logs to a railroad, and cheaper in every way; less wear and tear on the machinery—and you have to consider fire risk.” (Record, p. 362.)

He goes thoroughly and completely into all of the elements and factors that affect the market value of standing timber, discusses the cost of logging on rough ground and on practically smooth ground; the cost of logging old growth ripe timber as compared with young growth timber. Goes thoroughly into the question of construction and operation of logging railroads. (Record, p. 365.) Says the fire risk in the interior is better than on the straits. Says the timber in the interior zone can be logged “as cheap as any timber I know of in the State of Washington; I think cheaper than any tim-

ber on the Pacific Coast, logged to cars; that is, putting on cars ready to haul to the market." (Record, p. 366.) "I figure that a railroad can be built from the mouth of the Pysht down to the center of the Lacey tract for less than two hundred thousand dollars. They have in their tract, according to the county estimates, some three billion feet, and two hundred thousand dollars at a cost per thousand, would be a little over five cents a thousand. Take the Pysht tract, which they have referred to considerably; we have about seven hundred million there, and the cost of building the main line there to open up the Pysht tract would probably be about seventy-five thousand dollars, and that would be about the same cost per thousand, about six or seven cents a thousand, practically no difference considering the two tracts. It would cost no more to build a railroad to open up one than the other." (Record, pp. 367, 368.)

Witness then follows with a detailed explanation of the cost of logging and handling logs over logging railroads. (Record, p. 370.) Asked:

"Q. What in your judgment is a comparative value of a stand of timber per thousand feet in Zone No. 1 and in Zones Nos. 2 and 4?

A. Well, I think that the timber in the interior is worth fully as much or more than the timber on the straits. Take it as a whole, I know it is worth more; that is, take all tracts

along the straits as one tract, and all the Lacey tract in the interior. The Lacey's have practically all the fir timber in here, excepting the state lands, and some which the Milwaukee has. It is a more valuable tract of timber." (Record, p. 371.)

Witness is sure that the Lacey people could have operated their timber during the period of 1912, 1913 and 1914 at a profit, at a dollar per thousand stumpage, basing that at \$2.00 per thousand (Record, p. 382); that his own business has been operated at a profit during that time at both Grays Harbor and Everett. He further stated that they bought a tract of E. K. Wood Lumber Company on which there was five hundred million feet of timber, and paid in excess of \$2.00 per thousand feet for it; it was in Township 21, Range 9, in Chehalis County, in the same belt as appellants' timber, more than 25 miles from market or salt water; "would have to be logged by railroad after you build it; there was not any railroad when the timber was purchased, but is building it now." (Record, p. 389.) This timber was purchased in 1912.

This witness was subjected to a long and searching cross-examination, which an examination of the record will disclose only serves to more thoroughly emphasize his familiarity with the subject and his thorough qualification to testify as an expert witness.

N. I. PETERSON, witness for appellees (Record, p. 396), has been engaged in the logging business for the past twenty years, now operating in Dungeness in the east end of Clallam County; has been in active supervision of logging operations during all of that time in the State of Washington, and has bought timber lands in the state. Is familiar with the market price of logs and the market price of timber and timber lands. Has driven through the timber lands of appellants and has examined the county cruises of those lands. Places a market value on appellants' timber in Zones 2 and 4 of \$2.00 per thousand feet on March 1st, 1912, and the same value on March 1st, 1914; places a value of \$2.00 per thousand on said dates on the timber in Zone No. 1, the "straits" zone.

A careful examination of the testimony reveals the fact that appellants' witnesses confess the most casual inspection of the timber, merely what could be seen riding through in an automobile; did not even go into the timber of appellant Ruddock & McCarthy; made no examination of the county cruises, or any other cruises, and none of them would have bought or sold upon the information possessed by them. As a matter of fact, they pretty generally admitted their own lack of qualification to testify.

The witnesses for appellees, on the other hand, examined the timber with a great deal of care, locating themselves upon specific tracts of land, measuring trees, discussing the quality of the timber, taking elevations at various places with aneroid barometers, examining the character and quality of the soil, carefully considering the logging and other conditions surrounding the timber, the possibilities and cost of railroads for its ultimate removal, and displaying upon the most searching cross-examination a thorough familiarity with all phases of the subject. They out-numbered the appellants' witnesses, and greatly out-weighed them in quality and character of testimony. They all testified to the fact that appellants' timber in the interior zone is worth fully as much, if not more, than the timber situated in the "straits" zone, and a majority of all of the witnesses examined stated positively that the timber of the appellants in the interior zone had a value on March 1st, 1912, and on March 1st, 1914, of at least \$2.00 per thousand feet; while one witness testifies to a market value of \$1.00 to \$1.75 per thousand feet for fir, and a value of \$2.00 to \$2.25 per thousand feet for cedar and spruce, and another witness places a value of \$1.75 to \$2.00 per thousand feet on appellants' timber.

The timber of appellants was assessed in 1912

at 70 cents per thousand feet in one zone for fir, spruce and cedar, and at 60 cents in another zone. The preponderance of the best qualified testimony shows that it had at the time a market value of \$2.00 per thousand feet; in other words, it was assessed at approximately 35 per cent of its value. The witness Hallahan, County Assessor, who made the assessment, testified (Record, p. 504) that he was endeavoring to assess all of the property in Clallam County at fifty per cent of its value; and at another time he testified (Record, p. 511) that he raised the assessment of all fir, spruce and cedar timber 10 cents a thousand in 1914, because it had been previously assessed too low, and we find it assessed in 1914 at 80 cents per thousand feet in one zone, and 70 cents in another zone. The value has been established at \$2.00 per thousand feet by a preponderance of the best testimony, which makes an assessment of only 40 per cent of its market value for 1914. This raise in the assessed value of the timber was applied to all of the timber lands in Clallam County, and did not in any way discriminate against these appellants. Not only was this class of property raised in value, but city lots in the business district of Port Angeles were increased 73 per cent, and residence or outlying lots in the same city were increased 23 per cent. Farm lands were increased approximately 10 per cent, and un-

improved or wild lands were raised about 16 per cent in 1914, showing beyond question an honest and earnest effort on the part of the county assessor to fully, fairly and honestly discharge the duties of his office. We submit that the weight of evidence establishes the fact that there has been no discrimination whatsoever in the assessment of timber and timber lands between different ownerships or different localities.

RAILROADS.

Appellants lay great stress upon the cost of railroad construction and operation, endeavoring to persuade the court to enter into a series of complicated computations by taking the market value of logs in the water and figuring back through all of the processes of dumping, transportation, loading, yarding, cutting and falling, to the value of the log in the tree in the woods; but we submit that this is not the correct method to be employed by either the court or by the equalizing officers. It may be proper, in cross-examination, to test the qualifications of the witnesses, but the market value of any land, either timber or otherwise, is not to be ascertained in such a manner. It is to be ascertained by direct testimony of men familiar with the property, its surroundings, its uses and purposes, and its desirability as an investment. The witnesses for ap-

pellees in this case, upon cross-examination, have shown a most thorough and expert familiarity with the subject, as well as a thorough knowledge of the market value of all of the timber in contention and concerning which they have given positive testimony; and it is this testimony which should govern, not any far-fetched deductions to be made by complicated computations.

It is alleged in appellants' complaint (paragraph 21; Record, p. 17) that their lands are at present wholly destitute of facilities for transportation, and it is impossible to bring the timber thereon into the market; that this cannot be accomplished except by the construction of a railroad at great expense. They also allege that this expense is beyond the present means at command of appellants. This allegation has nothing to do with the case, and the fact that appellants may not be in a position to finance extensive logging operations has no affect upon, and does not in the least influence the market value of their timber or of any other timber in that vicinity.

There was much testimony adduced at the trial upon the railroad phase of the case, and an examination of it will disclose the fact that appellants completely failed to sustain this immaterial contention. On the other hand, compelled to meet it, appellees

completely disproved it. That railroads could be cheaply constructed and easily operated is evidenced by the testimony of R. H. Thompson, civil engineer, conceded to be thoroughly qualified (Record, p. 301), and who had made a thorough investigation, upon the ground, and whose written report and estimate of the cost of such railroad is on file as "Plaintiffs' Exhibit No. 26" (Record, p. 304); by the testimony of S. A. Walker, civil engineer, qualified and competent (Record, p. 394); and by the testimony of R. W. Remp, civil engineer of large experience, who made a survey upon the ground (Record, p. 400); as well as by the testimony of other witnesses for appellee, who testified to the value of timber.

The witness William J. Chisholm has built four to five hundred miles of logging railroad (Record, p. 319). On cross-examination (Record, p. 333, *et seq.*), goes into railroad construction cost in detail, showing a thorough familiarity with the subject; says it would take no more equipment to log the interior timber than it would the "straits" timber, except you might have to have a little heavier locomotive on the main line. (Record, p. 328.) That the cost of hauling logs after you get them to the main line is very small.

The witness Newbury (Record, p. 326), asked if

“Q. In saying that the value of this timber in the interior is as great as that on the straits, did you take into consideration that this timber had to be hauled out a good many miles before it got to the straits?

A. My experience is that after your plant is in the transportation itself does not cut so much ice in the logging; that is not the expensive part after the plant is built. It is the operating, the kind of ground that you have to operate on, and the expense is in the operation itself on the ground. After you get your logs loaded on the cars——

(Interrupted by counsel for appellants.)

Q. Didn't you take into consideration the upkeep of your road and the necessity of keeping up your rolling stock and equipment and the cost of bringing out those logs?

A. I would over balance that by the different localities you log in; that is not the expensive part of it.” (Record, p. 388.)

He testifies further that railroads must be used in the logging of the straits timber as well as the interior timber.

Appellees' witness Charles McGuire (Record, p. 351) on cross-examination says that it would cost from ninety-six to one hundred and twenty thousand dollars to build a road from Clallam Bay into the appellants' timber. (Record, p. 352.) Gives in detail the amount of equipment it would require; that the cost of putting in such a road completely equipped to log the timber in the interior would not exceed ten cents a thousand feet.

Appellees' witness C. I. Wanamaker says it will take a road 18 miles long to open appellants' timber, and does not consider this any advantage in favor of the timber lying on Pysht River, in Zone No. 1, as against the land in the interior—or very little difference. (Record, pp. 359-360.)

Appellees' witness R. D. Merrill (Record, p. 367), testified: "I figured that a railroad can be built from the mouth of the Pysht down to the center of the Lacey tract for less than two hundred thousand dollars. They have in their tract, according to the county estimates, some three billion feet, and \$200,000.00 at a cost per thousand feet, would be a little over five cents per thousand, the cost of that railroad." And as to the cost of hauling timber: "Of course, it would cost a little more to haul from the interior than from the exterior" (Record, p. 368); but shows that that would be overcome by the cheaper cost of logging. (Record, p. 369.) On page 377 of the record he estimates that it would only increase the cost about one cent a thousand, a figure so small that it would not be considered at all in figuring the cost of operation.

It is clearly shown by the testimony of all of the qualified witnesses that the cost of moving saw logs from the interior zone, as compared with the exterior zone, is of very small moment—so small as

to scarcely affect the value of the commodity handled, saw logs—and to not reflect itself at all in the value of standing timber when all of the other facts and features are taken into consideration. But even at that, the assessor recognized a distinction and assessed the timber of the appellants in the interior zones at from ten to twenty cents per thousand less than he assessed the timber in the exterior zone. And if we concede that his assessment were a 50 per cent assessment, he has made a difference in the *actual* value in favor of the appellants of from twenty to forty cents per thousand feet—surely enough—yes, much more than enough—to take care of the whole transportation problem; a generous allowance indeed.

We would not cumber the record with so much concerning railroad construction and operation, but for the fact that much stress has been laid upon it by appellants. Not only did they raise the issue in their complaint, but in appellants' brief, at page 119, they used the following language:

“Second: The valuations by the defendants' witnesses were all based upon the speculative value of what the logs would be worth if a railroad was built into the timber and the timber opened up, estimating it from the standpoint of the profits and losses of an operating business not yet undertaken, and most of defendants' witnesses expressly admitting that they know of no values within five years past of timber

lands in Clallam County, either on the straits or on the interior, and never heard of any sales at more than \$1.00 per thousand for the lands.

Third: Their valuation from an operative standpoint was based upon the assumption of the building of a railroad from the lands on the interior to the straits to the mouth of the Sysht River, or to Port Angeles.”

We submit that the statement that the valuations by defendants’ witnesses were all based upon speculative value of what logs would be worth if a railroad was built into the timber, etc., is specious and not borne out by the facts. All of appellees’ witnesses who testified to market values of timber lands, testified in direct and positive manner, and the direct testimony of every witness was expressly confined to market value. After these witnesses had so testified, counsel for appellants by an elaborate process of cross-examination brought into the record a great mass of testimony relating to varied and numerous factors which only remotely enter into the market value of timberlands, such as distance from mills, cost of logging operations, cost of railway transportation, freight rates, etc., laying particular stress upon the railroad phase of the case. It is true that after these factors had been drawn into the case by cross-examination, each witness testified that he had taken them into consideration in making his estimate of the market value. All of this testimony was developed, not upon direct examination,

but upon cross-examination, none of which was proper except as their knowledge of these conditions might affect the credibility of the witnesses and the weight of their testimony as showing their familiarity or lack of familiarity with the factors which may influence market value.

Appellants' statement that valuations by appellees' witnesses were all based upon speculative value of what logs would be worth if a railroad were built into the timber and the timber opened up, estimating it from a standpoint of profits and losses of an operating business not yet undertaken, is an express mis-statement of the effect of the testimony of the witnesses. It was only after appellants' counsel had gone at great length into the cost of logging operations, the cost of railroad construction and the matter of freight rates, that appellees introduced testimony of the various engineering witnesses whose testimony supplemented and verified the statements made by appellees' timber witnesses during the course of their cross-examination.

A great deal of testimony with reference to the cost of transporting logs was introduced into the record by appellants, including the testimony of two representatives of transcontinental railroads, the Northern Pacific and the Chicago, Milwaukee & St. Paul, and the tariff sheets on logs of these two com-

panies were introduced in evidence. The matter of log transportation by transcontinental railways can be but very remotely related to the issues in this case. It is so far fetched as to be practically negligible, because a tariff of \$1.25 or \$1.50 per thousand feet on logs, a manufactured product, has but the most remote and indirect relation to the fair cash market value of timber lands. It is only after the timber standing upon the lands has been felled, bucked, yarded and transported by a logging railroad to a shipping point upon a transcontinental railway, becoming by these operations an entirely different commodity, possessing a higher recognized and standardized value, that the matter of freight rates becomes of importance, and then it has a bearing, not upon the value of lands containing standing timber, but upon such new, separate and distinct commodity, namely, manufactured saw logs.

On page 132 of their brief, appellants make this statement:

“Both classes of timber, they say, are worth \$2.00 per thousand, and yet it costs \$1.50 per thousand to pick up this interior timber and put it where now stands the timber of the straits zone, on Clallam Bay, Pysht River, or Mike Earles’ camp near Port Crescent.”

We submit that there is not one atom of evidence in the record with which to clothe this naked assertion. But, conceding it for the sake of argument,

its fallacy is clearly shown if it is borne in mind that upon its arrival at Clallam Bay, Pysht River, or Mike Earles' camp at Port Crescent, it has a value of \$6.00, \$8.00 and \$11.00 per thousand feet instead of the value of \$2.00 per thousand which it possessed in the tree growing upon the lands in the interior zones. Freight rates are a matter of concern under such circumstances to the buyer of logs, or to the saw mill operator, to whom those rates become an influencing factor in fixing the market value, not of standing timber, but of manufactured saw logs, and to be compared with values, not at \$2.00 per thousand for standing timber, but with current market quotations for saw logs at \$6.00, \$8.00 and \$11.00 per thousand feet.

HEMLOCK.

Appellants pay great attention to the value placed upon hemlock timber, insisting that the valuation given it by the assessing officers works an injustice upon them which entitles them to partial relief. Conceding, for the purposes of the argument, that the hemlock may have been overvalued, yet there is nothing in the record to show that any discrimination was practiced against appellants. An examination of the zone map attached to and made a part of appellants' brief, will disclose the fact that hemlock was uniformly and proportionately

assessed in all parts of the county. If overvalued in one locality, it was overvalued to an equal extent in every other locality. This fact in itself should be conclusive evidence of the honesty and good faith of the assessing officer and completely negatives any assumption of discrimination against the lands of appellants or in favor of the lands of any other holder. It may have been an error in judgment on the part of the county assessor, but it certainly was not fraud, and the courts will not interfere to correct errors in judgment or to make a reassessment because of a slight overvaluation in property, certainly not where the overvaluation was uniform upon all properties of like character similarly situated.

In the State of Washington taxes upon real property are laid *in rem*, and it is to be borne in mind that it is the land and not the timber which bears the assessment. The assessing officer, through his deputies, the timber cruisers, makes a thorough and searching inspection of the timber standing upon the lands and uses this as an important factor to assist him in making a fair and just appraisal of given lots or tracts of the land upon which it stands, and we submit that the testimony in this case conclusively shows that no tract of land in controversy has been overvalued. Some elements may

have been taken at a valuation slightly in excess of their true value, other elements may have been considered below their true value, but when all of the elements were considered and the valuations finally fixed and placed upon the assessment rolls, the lands were not overassessed and no discrimination has been shown.

We have already pointed out that value is a question of opinion upon which, as the court knows, the minds of reasonable men differ most materially. Of the two witnesses produced by the appellants, most competent to judge of the value of their property, Thomas Bordeaux is probably best qualified by reason of his business experience and standing in the lumber world, and Earle C. Duvall, who made the cruise for the county, is so by reason of his actual experience with the timber. Mr. Bordeaux testified that the appellants' hemlock is worth 50 cents per thousand; that the hemlock in the Straits zone is worth 75 cents per thousand (Record, p. 119). Duvall swore that appellants' hemlock was worth 50 cents per thousand (Record, p. 125). He swore that the Straits hemlock was worth 75 cents per thousand (Record, p. 125).

Before the court is justified in finding fraud upon an excessive valuation, the excess must be so great as to be absolutely conclusive, and all the

cases either bear out this statement of the law or go further and hold that excessive valuation of itself is not sufficient to establish fraud in the absence of other circumstances bearing it out. So in *Olympia Water Works vs. Gelbach*, 16 Wash. 482, the court held that the excess must be so great that fraud must be conclusively presumed.

The same language occurs in *Templeton vs. Pierce County*, 25 Wash. 377, but in Illinois the courts go even further and hold that even excessive valuation will not authorize the court to declare the assessment fraudulent.

Burton Stock Car Co. vs. Traeger, 187 Ill. 9;
58 N. E. 418;

Sanitary Dits. of Chicago vs. Gifford, 100 N.
E. 953; 257 Ill. 424.

An additional feature of this suit is equally conclusive. Allegations in the bill of complaint charge a conspiracy against appellants and in favor, among others, of the timber owners in the Straits zone. These allegations will be found (in cause number 2907) in paragraphs 7, 18, 19, 22 and 24. As a matter of fact, paragraph 7 specifically refrains from charging fraud in the assessment of the timber in the Straits zone.

In other words, the charge in the complaint and the theory on which the case was tried, was that the assessment of all the timber in the Straits zone

was at least a fair assessment. But now, appellants are urging upon the court a theory at war with the one on which the case was tried, namely: that the assessment of the hemlock in the Straits zone, as well as in the Interior, was a fraud.

As a matter of fact, the valuation on the hemlock in Clallam County is no different than the valuation on the hemlock in other portions of this same belt of Olympic Peninsula timber. Alex Polson testified that the hemlock both in Chehalis and in Grays Harbor County was assessed from 25 cents to 40 cents per thousand feet stumpage (Record, p. 316). This record shows that in Clallam County the assessment on the hemlock was from 20 cents to 40 cents and counsels' present theory would convict not only the assessor of Clallam County, but the assessors of all the contiguous counties of fraud in the matter of the hemlock valuation.

Appellants' assessment for 1914 is in round figures \$1,667,000.00. The valuation of the hemlock, as shown by their brief, is in round numbers \$223,426.00. In other words, the hemlock valuation is only 13 $\frac{4}{10}$ per cent of the value of their total valuation. Where an assessment concerns property worth several millions of dollars about which the witnesses are testifying, more careful consideration is given to the more valuable property; and upon

comparing the record the testimony of the witnesses on the valuation of the fir, spruce and cedar as compared with their testimony as to the valuation of the hemlock, the court will be struck with the fact that the former received much more careful consideration from all witnesses than did the latter. Their statements have, therefore, been much more loose, and their opinion has been formed much more carelessly than it has been in regard to the more valuable property. The hemlock being regarded by all the witnesses as a mere incident, both because it is of less value than the other timber and because it is so much smaller in amount.

The idea that the assessing officer of this county desired to defraud in the matter of the valuation of property which constitutes about one-seventh of the value of the timber, and put a fair valuation on the six-sevenths, is an idea which probably will find support in the mind of no person not interested in litigating the question. Moreover, if the court takes the testimony of the witnesses for the appellees and attempts to make a judicial determination of the value of this timber, the finding would be that the first class timber was assessed at much less than 50 per cent of its value, and even were the hemlock overvalued the total assessment on the property of appellants would not be 50 per cent of its value.

This result necessarily occurs in every assessment that is made. It is not possible for the assessing officer to place a valuation upon property which is exactly 50 per cent of what some third party would testify is its actual value. Personal idiosyncrasies necessarily result in a different judgment on different classes of property, and the fact that the judgment of the assessor differs on certain classes of property from the judgment of witnesses who have testified as to its value, is the best possible evidence the court could have that the assessor used his independent judgment.

We believe this contention of appellants originates in the circumstance of the slant the testimony happened to receive upon the trial of the case, because the court will search in vain through the pleadings in the case and the testimony of the witnesses for the appellants, for any fancied distinction in the honesty of the valuation as between the hemlock and the first class timber. The alleged fraudulent valuation of the hemlock as being much greater than the valuation of other timber, apparently never occurred to appellants until after the testimony was all in, and this circumstance is only less remarkable than the fact that the owners of hemlock in the Straits zone, which if valueless is equally valueless with the appellants' hemlock, have not discovered

the fact that instead of their being a discrimination in the timber assessment in their favor, that there is (if appellants' position be true) a discrimination very materially against them in the matter of the hemlock valuation. Appellants ask the court to wipe out the entire valuation of the hemlock on the theory that that class of timber is absolutely valueless. Appellants' hemlock is valued on an average of 30 cents per thousand, while the timber owners in the Straits zone possessing hemlock which is equally valueless (if appellants are correct) are assessed on the hemlock at 40 cents per thousand without complaint. Such a situation is, of course, impossible.

In this connection it is interesting to note that in the case of *Washington Water Power Co. vs. Kootenai County*, 210 Fed. 867, the district court of Idaho did exactly what the appellants are now asking this court to do, namely: make an arbitrary reduction upon one item of a disputed assessment, and we quote from that decision the comment of this court upon the action of the lower court in that regard, as follows:

“The trial judge found that the two dams above mentioned were overvalued in the assessment to the extent of \$386,229, and that the railway spur and bridge were likewise overvalued to the extent of \$28,954.61, and that such overvaluation were so gross, and the manner

of making them so unreasonable that the complainant was entitled to protection against the taxes on those overvaluations, which protection it gave by the decree entered, denying the complainant the relief prayed in all other respects.

(2) As there is no appeal on behalf of the county from that portion of the judgment awarding the complainant the limited relief mentioned, that matter is not for our consideration." (Page 869.)

REAL ESTATE ASSESSMENT.

FARMS AND SEQUIM LOTS.

By reason of the proximity of the townsite of Sequim to the farming community in the county, it will be easier to consider the Sequim lots in connection with the discussion of the value of the surrounding farming lands. In the discussion of the timber assessment it has appeared that practically no transfers have occurred within a period sufficiently recent to afford the County Assessor a standard by which to measure the market value of timber. When, however, we consider the value of farm property and of town lots, there would be much less excuse for a mistake on the part of the Assessor, and he can be expected to follow values much more closely. We have in this record two classes of evidence of real estate values. We have evidence of actual sales at or about the time of the assessments,

and we have the testimony of a non-resident operator on behalf of appellants, together with the testimony of experts for the county, who were competent to pass upon values. Appellants, in their brief, have called the attention of the court to but one class of evidence, that of the experts, and, before placing before the court every instance of actual transfers which either side was able to obtain and place in the record, we will consider authorities to show the comparative reliability of actual sales, under normal conditions, as opposed to the testimony of experts.

In *The Albert Dumois*, 177 U. S. 240, 255; 44 Law Ed. 751, 760, the United States Supreme Court, in fixing the market value of a vessel lost in collision, uses this language:

“There was no error in fixing the value of the *Argo* at the sum of \$15,000, an increase of \$4,000 over the amount fixed by the district court. The evidence of her builders was that she originally cost \$18,000 and that if she had been kept in good repair she would have been worth two-thirds of that amount at the time of the collision. There was also testimony to the effect that her owner had, at the time of the collision, concluded a sale of one-half the *Argo* for \$7,500 and that it was to have been delivered and the money paid for this moiety on the day following that upon which she was lost, and upon her return to the city. *This is better evidence of her actual value than the conflicting opinion of the experts*, more or less friendly to the owner, who put her value at from \$8,500 to \$30,000.”

The United States Supreme Court in a number of cases refers to expert testimony. From *The Conqueror*, 166 U. S. 110, 130, 133; 51 Law Ed. 937, 946, 948, we quote as follows:

“In short, as stated by a recent writer upon expert testimony, the ultimate weight to be given to the testimony of experts is a question to be determined by the jury, and there is no rule of law which requires them to surrender their judgment or to give a controlling influence to the opinion of the scientific witnesses.”

Evidence of an actual sale to establish the value of timber was admitted by this court in the case of *Lynch vs. United States*, 138 Fed. 535, in which Judge Cushman represented the appellee.

The District Court for the Northern District of California in *Spring Valley Water Works vs. San Francisco*, 192 Fed. 137, 165, uses this language:

“Evidence of actual contemporaneous sales of portions of the very property in question seems to me to be useful and to afford a valuable guide, where the opinions of the experts are so irreconcilable.”

One of the best statements of the principle is found in the following language from *Ommen vs. Talcott*, 175 Fed. 261, 267:

“The value of a thing is what under normal conditions it will sell for, and the best evidence of that, when you are sure that the sale is under such conditions, is the actual sale itself.”

In *The Granite State*, 3 Wall. (70 U. S.) 310,

18 Law Ed. 179, 180, the United States Supreme Court makes use of this language:

“We do not feel called upon to decide between the opinions of witnesses who have given their guesses on the subject of the value of this rotten hull * * *.”

In the case of *The Schooner Catherine*, 17 Howard (58 U. S.) 170, 15 Law Ed. 233, 234, on the question of the cost of repairs to a schooner which had been in collision the Supreme Court held that where the cost of repairs can be proven the testimony of experts to show what such repairs ought to cost is not admissible.

It was absolutely unnecessary for appellants to brief for this court nothing but the testimony of their expert on real estate values when the record is replete with actual transactions, some of which were obtained by appellants and some by the appellees. This evidence we will now brief for the court.

First. Of the Real Estate in Town of Sequim.

On May 1st, 1911, there was platted eighty acres as the central plat of Sequim (Exhibit 34). Blueprints of the original plat were made and distributed, on each of which was indicated the price of each lot and sub-lot. None of the property was sold until 1912 (Record, p. 581), most of the sales occurring in the year 1913 (Record, p. 557). In no instance was a lot sold at a higher price than that

placed upon it, the sales being made on terms of \$10.00 down and \$10.00 a month (Record, p. 557), except where the sales were made for cash, when the price was reduced below that which is marked on the exhibit (Record, p. 557). So that the prices shown on exhibit 34 are actually greater than the market value of the property, and as these sales continued up to within a month or two of March, 1914, (Record, p. 581) a comparison between the prices of the property marked on exhibit 34 with the 1914 assessment is more than favorable to appellants.

A comparison between the prices at which this property was sold on time in 1913 and 1914 and at which it was assessed in 1914 follows:

Description of Property.	1914 (Exhibit 32) Assessed Valuation.	1914 (Exhibit 34) Sale Price 1913 &
Block 1.....	\$1,540	\$3,800
Block 2.....	1,340	2,600
Block 3 (less lot 24 reserved)	1,500	2,450
Block 4 (less lots 1, 2, 4, 21 reserved).....	1,200	2,350
Sub-Lot 5.....	500	1,000
Sub-Lot 4.....	500	1,500
Sub-Lot 3.....	500	1,200
Sub-Lot 2.....	500	1,200
Sub-Lot 1.....	500	800
Sub-Lot 10.....	500	1,000
Total.....	<hr/> \$8,580	<hr/> \$17,900

This is a 48 per cent assessment. (Sub-Lots 6, 7, 8, and 9 were replatted as Sprague's Addition and as Park Lane Addition and are valued by defendants' expert real estate witness, Mr. Keeler, in Exhibit 33.)

In February, 1914, just prior to the 1914 assessment, there were 38 lots in this Central Plat of Sequim which were unsold, consisting of one whole block and some scattering lots. Mr. Keeler contracted to buy them at \$100.00 per lot, paying 5 per cent down (Record, p. 581). These 38 lots thus contracted for \$3,800.00 are assessed in 1914 for \$2,210.00, which is a 58 per cent assessment on the contract price. In other words, platted property in a town of 450 inhabitants (Record, p. 553) sells at the rate of \$800.00 per acre and is assessed at the rate of \$443.00 per acre (See Exhibit 32). These are the actual sales of an entire addition by the dedicator of the plat who sells the property on the market as a business proposition, which property the general public purchases at or below the owner's figure. This plat covers more than a third of the platted property in the town. The statement of the facts is sufficient argument.

The southeast corner of the Central Plat of Sequim is the center of town and the property farthest away from that was not platted into build-

ing lots, but into five-acre tracts (less the portion dedicated as streets). That was likewise sold on contract, one piece selling at the rate of \$300.00 per acre, one at the rate of \$160.00 per acre, the prevailing prices being at the rate of \$210.00 and \$253.00 per acre for the other ten sub-lots. They were sold on contract at these prices (Record, pp. 581-582). Three of the contracts were forfeited by the purchasers. These sub-lots are assessed at the rate of \$105.00 per acre.

All the rest of the townsite of Sequim (as well as many pieces of surrounding property) was valued by Mr. Keeler in Defendants' Exhibit 33. His valuation of all other real estate in Sequim in March, 1914, is \$49,805. The 1914 assessment of this property as shown on exhibit 32 is \$28,845 which is a 58 per cent assessment, according to the judgment of this witness.

In making Exhibit 33, the Central Plat of Sequim was not included because the same prices rule today on such lots in it as are changing hands and those values already appear in Exhibit 34 (Record, p. 582). Mr. Keeler and Mr. J. A. Adams (with his partner, Mr. Greenfield) are the only real estate dealers who, in recent years, have maintained an office for the sale of property in and about Sequim (Record, p. 552). Mr. Adams testifies that

very little acreage has been moving there for several years, almost nothing doing, and that there have been no sales for a year (Record, p. 699, and Mr. Keeler testified that about ten per cent of the property had been sold within four years and that he had made the sales. No man, therefore, is as well qualified to pass his opinion as the witness Keeler. He was, therefore, asked by appellees to bring into court his original records showing all his sales during the period of the last four years. He compiled Exhibit 33, which is his valuation of the property, from a consultation of these records. He so testified, and counsel for appellants brought out from the witness that the original records of those sales were with the witness in the court room and were available for cross-examination (Record, pp. 555-556). But appellants were not interested in the cross-examination of this witness for the purpose of eliciting the truth.

At the close of Mr. Keeler's cross-examination counsel for appellants was again reminded that the records of the witness were in the court room and available for cross-examination (Record, p. 582).

Now we have established a standard of value for one class of property. Not by the testimony of a non-resident operator, based upon nothing, but by testimony of actual sales in the open market and an

exhibit prepared from the original records of the witness who made the sales. The testimony of the witness Keeler, therefore, accords with the market value as shown by the actual transactions themselves. Keeler's opinion, and the sales in the market are, in turn, absolutely in accord with the assessment. The only witness produced by appellants to overturn the assessment as to real property was the witness Ware. Let us now compare his testimony with these actual sales.

The Central Plat of Sequim, which we have just been considering, lies in the South half of the North-east quarter of Section 19, Township 30, Range 3. In his direct examination appellants asked Mr. Ware the value of unimproved land in this section in 1914. He first said from \$50.00 to \$75.00 per acre, then remembered that Sequim was in the East half of this section and that the values would, therefore, be increased. For this reason he put a higher value on the East half of section 19 and said that the value of \$50.00 to \$75.00 per acre would stand for the West half of the section (Record, p. 141). He was given permission, upon leaving the witness stand, to prepare a statement out of court of his valuations on the acreage (Record, p. 142). He did so by writing in red ink his estimate of valuations on Exhibit "R". This exhibit had previously been

prepared for the purpose of showing the assessment on the acreage. Consequently, when Mr. Ware at his leisure started to put his value on the land in Section 19 he found, by looking at the figures in front of him, that the assessment of the property as shown on Exhibit "R" was more than fifty per cent of the amount of his valuation, and he thereupon valued the unimproved real estate in the West half of Section 19 at from \$50.00 to \$300.00 per acre instead of from \$50.00 to \$75.00 per acre, as he had just finished testifying. Now, compare this valuation by Mr. Ware with the actual sales in the market. We have already seen that platted property divided into 5-acre tracts in the Central Plat of Sequim, a half a mile nearer the center of town, sold on the actual market at from \$210.00 to \$253.00 per acre, on contract, at \$10.00 down and \$10.00 per month. And three of these contracts were forfeited. By what process of legerdemain does property a half a mile farther out of town increase in value fifty per cent except under the gentle influence of a perusal of the assessment which the so-called expert was hired to defeat? Nor is this discrepancy an isolated instance. In the course of the argument, which now follows, we will show the same relation between the excessive valuation of this witness and the actual sales on the market of the identical prop-

erty, in improved property, in unimproved acreage, in Port Angeles residence property, and in Port Angeles business property time and again. It appears from Exhibit "R" that the witness Ware values improved property in Section 19, Township 30, Range 3 at from \$125.00 to \$250.00 per acre in 1912, and at from \$200.00 to \$400.00 per acre in 1914. This value does not include the houses and barns but is for the lands alone (Record, p. 141). Indeed, the assessed valuations which are shown on Plaintiffs' Exhibit "R" refer solely to the land without the houses, barns, fences, and other fixtures, except in those instances where the improvements are shown separately (see pages 3 to 10 of Exhibit "R"). One of the recent sales shown in the record was of a 10-acre tract in the Northeast quarter of the Southwest quarter of this same section 19 which was bought by T. H. Adams for \$900.00. This 10-acre ranch adjoins the corporation (Record, p. 702). At the time of sale there was on the property a two-room house and a chicken house. The bare land is assessed in 1914 for \$60.00 an acre, sells at the rate of \$90.00 per acre, including a two-room house and a chicken house, and is valued by Mr. Ware at from \$200.00 to \$400.00 per acre.

Passing now from the property in the town of Sequim to the agricultural lands about Sequim and

in what are known as the Dungeness Bottoms, we will find that the fixing of values for this class of property is more difficult. The witness J. A. Adams, examined by the plaintiffs, testifies that he is familiar with the sales that have been made about Sequim and Dungeness. That he had a real estate office but has done no business there since he has had it. That he knows of no sales of agricultural land about Sequim within the last year; that there have been very few in the last few years, "almost nothing doing" (Record, p. 699). Then he describes all the sales of land in that vicinity of which he has any knowledge. He is asked if he recalls any others and answers, "No I do not know of any others now. There has been very little changed hands here in the last two years."

"Q. How about over Dungeness way?

"A. I do not know of any piece there that has changed hands in the last two years, unless it would be that Toby land * * *. Mr. Dick there sold it."

* * * * *

"Q. You don't know of any other sales around that community of Dungeness?

"A. I do not."

(Exhibit DD, p. 702).

Mr. Keeler testifies that in the list he made up, plaintiffs' Exhibit 33 (Record, p. 556) just a few of the parcels represent actual sales with which he is acquainted, and that possibly ten per cent of all the

property which he lists has changed hands in the last four years (Record, p. 559).

It will be seen, therefore, that there is much less data available upon which to form an accurate judgment of the value of this class of property than of the value either of Sequim or of Port Angeles lots. With the latter two classes of property inquiry among persons informed on the subject might elicit sufficient knowledge of actual sales and market conditions to form a reasonably sound judgment. But where the data is scant and instances of sales from which to form an accurate opinion are few, it is most difficult for a non-resident witness to form an accurate judgment. The record indicates the peculiar manner in which this non-resident was qualified as an expert witness on the value of real estate in the East end of the county. He testifies that he is familiar with the values of agricultural lands "to a certain extent" (Record, p. 141). He stated that he had been in the real estate business in Clallam County for twelve or thirteen years. Did not reside there all the time but was doing business there and had occasion during that time to keep acquainted with the buying and selling of agricultural lands, and states that he was familiar with the market value of agricultural lands from 1912 to 1914 (Record, p. 141). He moved to Seattle in the

spring of 1907 and returned to Port Angeles in the winter of 1912 and '13 and moved his family there in the spring of 1914 (Record, p. 143). But at no time does he ever testify that he has bought or sold property in the vicinity of Sequim.

While using his testimony as a basis upon which to overturn the assessment, the plaintiffs had ample opportunity in other ways to inform themselves of the actual values in order to substantiate, upon the cross-examination of the County's witnesses, the values to which Mr. Ware attempts to testify. In addition to the hearsay testimony of this non-resident expert, it appears that one K. O. Erickson (either with or without compensation, it matters not) performed detective work for appellants. This man has resided in the county for many years. Was chairman of the Board of County Commissioners and Commissioner from the western district of the county when the assessment for the year 1912 was made. In the bills of complaint he is designated, not by name but by title, and is specifically exempted from the charge of participation in the conspiracy (Record, p. 13). He approached the witness Keeler on behalf of appellants and attempted to secure from him a letter offering to sell the farm of Frank Lotzgesell at an excessive valuation, for the very evident purpose of spoiling both Keeler and Lotz-

gesell as witnesses upon the subsequent trial (Record, pp. 549-551). It sufficiently appears, therefore, that this man was in a position to have obtained accurate knowledge of the sales of property in the county. His disposition to perform such service appears from the services which he actually performed. Here, therefore, was an opportunity to have placed in the record information concerning actual sales within the county. It appears from the depositions (Exhibit DD) that Marion Edwards (a partner in the firm of Peters & Powell) spent several days in detective work at Sequim, ostensibly looking for a home. All the information regarding sales which he was able to obtain appears in the depositions (Exhibit DD).

The following are the only other sales of acreage which are shown in the testimony:

The witness Keeler testifies to a sale of a piece of improved property in Section 18-30-3 at the rate of \$125.00 an acre (Record, p. 558). The property in this section is assessed at from \$50.00 to \$60.00 an acre and is valued by Mr. Ware at from \$100.00 to \$125.00 an acre in 1912 and at \$200.00 per acre in 1914.

Keeler testifies to the sale of ten acres of improved property, being the East half of the East half of the Northwest quarter of the Southwest

quarter in Section 17-30-3, in 1912 by Walter Govin to C. E. Lonsberg, at the rate of \$110.00 per acre (Record, p. 582). This property was assessed in 1912 and 1914 at \$60.00 per acre. It is valued by Mr. Keeler at \$110.00 per acre and by Mr. Ware at from \$100.00 to \$125.00 an acre in 1912 and at \$200.00 an acre in 1914.

Mr. Keeler also testifies to a sale of ten acres, being the West half of the East half of the Northwest quarter of the Southwest quarter of this same section 17 by Walter Govin to Mr. Hamilton in 1912 for \$125.00 an acre (Record, p. 582). This land is assessed at \$60.00 per acre both in 1912 and 1914. Mr. Keeler values the property last described at \$1,000 instead of the sale price of \$1,250, because it is marshy land and has since grown up to willows. Mr. Ware, however, values it at from \$100.00 to \$125.00 an acre in 1912 and at \$200.00 an acre in 1914.

Again, Mr. Keeler testifies to the issuance of a contract of sale, (not a sale for cash) of the Northwest quarter of the Northeast quarter in Section 18 to J. A. Adams, at the rate of \$150.00 per acre (Record, p. 583).

Mr. Adams (Exhibit DD) testifies to a sale of 40 acres in the Southwest quarter of the Southwest quarter of Section 8-30-3, bought by T. H. Adams

in 1913 at the rate of \$37.50 per acre (Record, p. 700). The plaintiffs have filed no assessment covering this property.

J. A. Adams sold 20 acres in the Southeast quarter of the Southeast quarter of Section 7, on which none of the land was rocky and on which one acre was clear, at the rate of \$30.00 per acre, on five years time at six per cent interest (Record, p. 700). The plaintiffs filed no assessment for this property. Mr. Adams in 1914 sold ten acres of the same forty acres last above described. This consisted of bottom land, of which four acres was entirely clear and the balance was entirely cleared of stone, the sale being on five years time at six per cent interest, at the rate of only forty dollars per acre (Record, p. 701).

In 1910 Ed Guerin bought forty acres in Section 17 at the rate of \$35.00 an acre and bought another forty acres five years ago at the rate of \$40.00 an acre. "That is all clear" (Record, pp. 708-9). This land was assessed in 1910 at from \$25.00 to \$50.00 per acre for the improved land, which again is greater than a fifty per cent assessment.

Ray Hamilton bought ten acres, being the West half of the East half of the Northwest quarter of the Southwest quarter of Section 17-30-3, in 1913 at the rate of \$150.00 an acre. This land was assessed in 1912 and 1914 at the rate of \$60.00 an

acre, and is valued by Mr. Ware in 1914 at the rate of \$200.00 per acre. The land has been offered for sale at the price Mr. Ware puts upon it, but the owner has been unable to sell it at that price (Record, p. 709).

About two and a half years prior to the time of taking the depositions Mr. Adams sold a piece in the Southeast quarter of the Northeast quarter of Section 17 for \$25.00 an acre, on five years time at six per cent. This unimproved land is assessed in 1912 at \$15.00 per acre. In 1914 the new grade acreage books were available to the assessor and the land is assessed at from \$10.00 to \$25.00 per acre. It would seem that the owner of this piece of property might better claim a conspiracy against himself on the part of the assessing officers. Mr. Ware does not attempt to put a value upon this piece of property (Record, p. 712).

In the spring of 1912 present County Commissioner, James Dick, bought 149 acres in the Abernethy Donation Claim for \$6,500, which was at the rate of \$44.00 per acre. This land was improved and in cultivation. Mr. Dick took the crop off of it and sold the land that fall for \$7,500, which is at the rate of \$50.00 per acre. The property was highly improved, including a house, barn, water system, pumping plant, etc. (Record, pp. 667, 670).

This piece which sold twice in the open market in 1912, is assessed in 1912 and 1914 at \$30.00 per acre, which is a sixty per cent assessment on the highest price it brought in the market, but Mr. Ware values the bare land in 1912 at \$125.00 per acre and in 1914 at \$150.00 per acre, without any improvements. In other words, Ware's 1912 valuation is two and one-half times and his 1913 valuation is three times the highest price which the land ever brought with all improvements, and Ware's valuation is on the basis of the land itself without the buildings.

At this point we desire to caution the court against a misleading factor in plaintiffs' Exhibit "R". In every case on that exhibit where the assessment of the land is given and the assessment of the improvements is not shown, it is the assessment of the bare land which is referred to. But in every instance where the witnesses speak of the land being held at a certain price per acre, that price includes the improvements. That is true in the testimony of Mr. Keeler. Mr. Adams testifies that the land in that section can be bought "without much improvements on it" for \$200.00 an acre. Again, in answer to a question by Mr. Edwards he says, "I told you the other day that there was ten right down the road here, and one has got improve-

ments'' (Record, pp. 707-8). In plaintiffs' Exhibits U and V, the photographs by which Mr. Keeler is trying to interest a purchaser in certain of this property, the lands to which he refers are all improved.

The Roy Stone place, to which Keeler refers in plaintiffs' Exhibit "U" (Record, p. 559), is improved land with a modern house, well finished, up-to-date, a barn, pumping plant, concrete milk house, private lighting system and other improvements to compare. The whole thing, land and buildings, is offered at a price of \$200.00 per acre. The witness Keeler values the bare land at \$125.00 an acre and the bare land is assessed at from \$60.00 to \$75.00 an acre (Record, p. 560).

At the time when former County Commissioner K. O. Erickson, in his detective work for appellants, was attempting to spoil Mr. Keeler and Mr. Lotzgesell as witnesses in the contemplated law suit, he approached Keeler ostensibly to purchase a farm. Keeler offered Erickson the Ward place, consisting of 149 acres, for \$15,000 or at the rate of \$100.00 an acre for the property together with the buildings thereon. The total price for the property was \$20,000, which included all of the live stock, tools, implements, 19 cows, hay, crop in the barn, and all improvements, the personal property being figured

at a valuation of \$5,000 and the real estate and improvements being figured at \$15,000 or at the rate of practically \$100.00 per acre (Record, pp. 549-550).

The instruction, however, which plaintiffs had issued to Erickson apparently did not contemplate the obtaining of accurate information or the establishing of the real values of the property in the East end of the county. It is apparent that the instructions to Erickson contemplated solely putting Keeler and Lotzgesell in a hole.

The transactions above described are the only transactions in real estate in the entire eastern end of the county which are shown in this record. Every instance of an actual transaction comes from the testimony of the witnesses for appellees or in the deposition of the witness Adams. Testimony of no single transaction can be traced to Mr. Ware. As a matter of fact, he had no knowledge of a single actual transaction in the eastern end of the county and, consequently, is unable to testify to any. The sales which occurred, whether in 1912 or 1914, show no tendency toward a rising market. The testimony of Mr. Adams and Mr. Keeler both was that there had been no actual sales recently, been very little of this property changed hands in the year 1914, most of the transactions in acreage above set forth

occurring in 1912. The actual market, therefore, bears out the testimony of Mr. Keeler in reference to this real estate, "It is not worth any more in 1914 than it was in 1912. It don't sell for any more nor produce any more" (Record, p. 554). Now, bearing in mind an inactive market in 1914, let us see how the testimony of appellants' witness Ware squares with the evidence of market conditions.

Turning to Exhibit "R" he values the improved land in Section 17-30-3 in 1912 at from \$100.00 to \$125.00 an acre, and in 1914 at \$200.00 an acre. He gives the same values on the property in Section 18.

In Section 19 you will remember the excessive values which he places upon property contiguous to the townsite of Sequim—far in excess of the sale prices of property which was a half mile nearer the center of town.

The William Dick farm, in his opinion, increased in valuation from \$125.00 an acre in 1912 to \$175.00 an acre in 1914. He makes a similar increase in the McLaughlin property. He increases the Frank Lotzgesell property from \$175.00 to \$225.00 an acre. The Barrow Donation Claim from \$175.00 to \$225.00 an acre. The James Dick property and the Abernethy Donation Claim from \$125.00 to \$150.00 per acre. The Donald McInnes property from \$200.00 to \$250.00 an acre. If an expert witness is immune

from the limitations imposed by the actual market, then the testimony of the increase in the valuation of this property, which is made by Ware, can be justified. His judgment as to this increase cannot be justified upon any other basis.

In another particular Mr. Ware is contradicted by every other witness in the case. He was asked whether the values in Section 17-30-3 run fairly uniformly and answers, "Yes, sir, I should say it would run very uniform in 17." He is asked whether he could place an average valuation upon the section, and answers, "I think an average would cover it, I think" (Record, p. 141). Mr. Keeler is asked on cross-examination, "Well, does the land at Sequim Prairie run somewhat uniform as to its valuation? A. No, sir, very much the opposite. Two ten-acre tracts lying alongside each other, one will be worth double the amount of the other" (Record, p. 576).

The witness Garlick testifies: "* * * I do not know as I could give you an accurate value of lands. I do not think I could, because the land is of such variety that a person would have to be pretty well posted to give the value of it" (Record, p. 733). Again he says: "This land on the flat originally called Sequim Prairie it varies in character also. It is a hard matter to decide. Take down

on the lower part here it is more valuable than it is higher up because it is not so stony down that way, and it is more productive any way" (Record, p. 733). Again: "' * * It is a hard matter to give an estimation of the value of land where there is such a variety of land as there is in this country.'"

"MR. DICK: There is hardly two acres alike?"

"The Witness: Yes, sir, there ain't hardly two acres alike. My opinion about the difference in land would be different from someone else's. You can't make a thorough estimation of land in the community at all and be right any way." (Record, p. 734).

The witness Seal testifies: "' * * My testimony would not be of much consequence as to my ideas of value, because there is such a diversity of land. It is in pockets and flats.'"

Mr. Keeler testifies to the sale of two ten-acre tracts lying side by side, one of which is valued at 25 per cent more than the other because the latter is in a sub-irrigated district, has not been cultivated and has deteriorated (Record, p. 582).

Another side light thrown on this case was the attempt by appellants to use an organization among the farmers known as the Taxpayers League as a false face for the contention that one phase of the conspiracy was the organization of this league for the purpose of reducing the assessment on the real estate in the East end of the county and increasing

the assessment on the timber lands. The testimony of actual sales on the market establishing the assessment on the real estate in the eastern end of the county as a full 50 per cent assessment withdraws support from any contention that the Taxpayers League was a monster more vicious than the ordinary rural mutual welfare organization.

(b) PORT ANGELES REAL ESTATE.

In Port Angeles an increase of 2,000 in population since 1910, and the creation of an artificial real estate market with some small basis in fact, resulted in a material change in the value of business property of that town and a much smaller change in the value of the residence property; a change which is accurately reflected in the 1914 assessment, which increases the valuation on the business property in Port Angeles 73 per cent over the valuation placed thereon in the 1912 assessment, and increases the valuation of the residence property (Taxing District No. 2), as shown on defendants' Exhibit No. 38, 23 per cent. There is no difference in the value of the agricultural property, nor of the wild lands, but there is a material difference in the value of some city real estate.

The complaint of appellants, therefore, that the value of the timber lands was increased 14 per cent on a stationary or declining market is one which is

equally open to the owners of improved and unimproved acreage, who, by the theory of the bills of complaint, are residents of the county and beneficiaries of the alleged conspiracy.

Before starting in to analyze the testimony as to the honesty of the assessment of Port Angeles real estate, let us first see what formed the basis of the charge in these complaints that the property in Port Angeles was so grossly under-assessed. The plaintiffs are non-residents and without knowledge of local conditions save from information obtained by their local agent, Mr. Earle. He was self-deceived by comparing the 1912 assessment with the 1914 market, in ignorance of any change in the conditions of the market. An investigation, which formed the basis for these suits, was conducted by Mr. Earle, counsel for appellants, and a resident of the city of Seattle. He says, "I did not know about the boom. I was in Olympia at the time that boom was taking place" (Record, p. 695). He further states that the assessment of 1912 was the assessment with which he compared real estate values at the time he commenced his investigation in February, 1914 (Record, p. 695). On re-direct examination by Mr. Peters, Mr. Earle testifies that he made no investigation as to what was the market value of Port Angeles real estate in 1912, but that

the witness Mr. Ware "stated that the real market value of Port Angeles property had not changed in his opinion during the last two years" (Record, p. 697). And so thoroughly is Mr. Earle misled by Mr. Ware that he seriously questions Mr. Haggith: "Don't you think that this talk of depreciated values is manufactured depreciation?" And more to that same effect (Record, p. 444). Being thus misguided by the ignorance of a self-styled expert who assumed to possess a competence which he lacked, these cases have been the result.

The only other investigation to determine real estate values, before the institution of this action, was the investigation which Mr. Earle testifies he made by examining the records of transfers in the office of the County Auditor of Clallam County at a time subsequent to the boom. Appellants did not attempt, upon the trial of the case, to rely upon any of the records of these transfers. In the first place, being transfers founded on an artificial market, they would not express the true value of the property. In the second place, as is the case with all boom transfers, and as the testimony shows the fact to be, most of these transfers at the excessive valuations, were not sales for cash but were sales on exceedingly small payments down and on long terms and easy payments. What other reasons there may have been

we do not know, however, appellants did not attempt, on the trial of the cause, to introduce any of the records resulting from this investigation. The unreliability of such testimony is adverted to in no uncertain terms, in *Coulter vs. L. & N. Railroad Co.*, 196 U. S. 599, 609-10, 49 Law Ed. 615, 618.

“The under-valuation in the counties, looked at from the point of view just indicated, also does not appear to have been such as to warrant the action of the court. It is not contended that a mere under-valuation would be enough. It is admitted that it must have been systematic and intentional. There is, no doubt, a natural inclination to think such an under-valuation probable when it is suggested. But what is the proof? * * * It is obvious that the accidental sales in a given year may be a misleading guide to average values, apart from the testimony that some, at least, of the conveyances did not report true prices, yet they furnish the chief weapon of attack. The testimony as to the Board of Equalization taking 80 per cent of the reported sales was explained by the members of the Board. It would be going very far to assume that they were committing perjury because, to another mind, the sales seemed more significant and the explanations not very good. Inequality, we repeat, is nothing, unless it was in pursuance of a scheme.”

Upon these two unreliable sources of information, the statements of Ware and the records of transfers under abnormal conditions, which appellants find not of sufficient value even to be offered in

evidence, were based the charge of fraud in the real estate assessment. At that time there had been no investigation of the shingle mills, of the banks, of Earles Mill, or of the Olympic Power Company. These latter are make-weights and after-thoughts when the real estate assessment was found to have been absolutely honest. This case is too large to burden the court with every little detail, and when it appears, as it does here, that there was no scheme to injure anybody, we need go no further than to repeat the language of the United States Supreme Court. "Inequality, we repeat, is nothing, unless it was in pursuance of a scheme."

For years Port Angeles has been a sleepy, out-of-the-way place, leading to and from nowhere, lacking commerce, lacking manufactures, lacking every element necessary to growth, except confidence in its own future, and subject to periodic and spasmodic booms such as occurred in 1912. It is no wonder that the trial court, who had been to the town, expressed a spontaneous incredulity at some of the values of Port Angeles real estate for which appellants contend.

Every sale of Port Angeles real property, of which there is any testimony in this record, was made at the following figures:

Before the boom C. C. Henry sold two lots in

Block 425 for \$120.00. During the boom he sold two more lots in the same block for \$250.00. These lots are assessed at \$80.00 and are valued by Ware at \$300.00 (Record, p. 610).

On March 13, 1914, witness G. M. Lauridsen bought Lot 2 in Block 31 of Norman R. Smith's for \$2,500. It is assessed for \$1,500 and is valued by Ware at \$6,000 (Record, p. 417).

In January, 1914, Mr. Lauridsen bought Lot 18 in Block 54 for \$300.00 from a resident of Port Angeles. This lot was assessed at \$200.00 and valued by Mr. Ware at \$900.00 (Record, p. 434).

Mr. Aldwell testifies that a great many of the boom sales were on partial payments and that, in many instances, the property is reverting to the original owners (Record, p. 180). As an instance of that he cites the sale on contract of Lot 7 in Block 34 to Howard Waterman, now Assistant Attorney General of this State, for \$3,100, of which \$1,000 was in the assumption of a first mortgage and \$1,150 in a second mortgage given back by Waterman. Waterman has offered that lot, time and again, for \$2,150 but has been compelled to let it go back to the original owners, who have for months been attempting to dispose of it at \$2,0000. The lot is assessed for \$1,100 and is valued by Mr. Ware at \$5,000 (Record, p. 180).

In January, 1914, Mr. Lauridsen bought Lots 2, 3 and 4 in Block 311 and Lot 14 in Block 309 for \$140.00. This property is assessed in 1914 at \$120.00 and is valued by Mr. Ware at \$400.00 (Record, p. 434).

In the height of the boom witness Louis Levy sold a part of Lot 7 and all of Lots 8 and 9 in Block 19 of Stratton's Addition to a man named Salmon for \$5,500 (Record, p. 588). These lots are assessed in 1914 for \$1,900. Mr. Ware values a portion of the property, namely: Lots 8 and 9, at \$7,000, a price which is 37 per cent more for the two lots than the three lots sold for in the height of the boom.

During the boom Mr. Haggith sold Lot 20 in Block 14, together with the improvements thereon known as Hanning Hall, for \$10,500 (Record, p. 441). The property is assessed in 1914 at \$3,000. The bare land, without the improvements, is valued by Mr. Ware at \$15,000 or 50 per cent more than the property sold for, with all its improvements on, during the boom. The property rents for fifty dollars a month, which is a GROSS income of less than six per cent on the boom price of \$10,500. This income of fifty dollars a month is just exactly ten per cent gross on double the assessed valuation of the property, and is four per cent gross revenue

on Ware's valuation of \$15,000 for the bare land (Record, p. 441).

Prior to the boom in 1912 the lot on which Hanning Hall stands had been for years listed for sale in the office of Mr. Haggith at \$5,000, without a purchaser being found for it (Record, p. 441). Ware testifies that in 1912 this lot was worth \$8,000, in spite of the testimony of Haggith that it went begging at \$5,000.

There is some hearsay testimony in the record to the effect that J. P. Christensen in September, 1912, bought lot 19 in Block 15 for \$9,500. This property is assessed at \$2,500 and is valued by Ware at \$9,000. This boom sale is the only one which was completed and in which the valuation of Mr. Ware approximates even the boom price.

During the boom a Mr. Glines contracted to purchase from County Commissioner J. C. Hansen the West 5 feet of Lot 6 and all of Lots 7, 8 and 9 in Block 16 of Norman R. Smith's for \$50,000, payable \$5,000 in cash and the balance in five years. This sale occurred in November, 1912, at the height of the boom. Of the total purchase price only \$17,500 had been paid at the time of the trial of these cases, three years afterward, and the terms had been made more lenient for the purchaser. Just to what extent the record does not show (Rec-

ord, p. 442). The assessment and valuation of this particular property is not shown in the record in shape to make an accurate comparison, but we believe if the record of the lots thus contracted were shown in the record the assessment would be very much lower than one-half that price, if the sale shall ever be completed.

Mr. Lauridsen bought Lots 7 and 14 in Block 172 in December, 1913, or January, 1914, for \$175.00. These lots are assessed at \$100.00 in 1914 and are valued by Mr. Ware at \$450.00. (Record, pp. 434-435.)

On December 29, 1913, Lauridsen bought from K. O. Erickson Lot 1 in Block 308, Lot 13 in Block 392, and Lot 13 in Block 120, T. W. Carter's Addition, for \$100.00. In 1914 that property was assessed at \$70.00 and is valued by Mr. Ware at \$195.00 (Record, p. 435).

In March, 1914, a coterie of men in Port Angeles contracted to buy Lot 3 in Block 31, Lot 2 in Block 16, and Lots 8 and 9 in Block 30 of Norman R. Smith's for \$15,000.00, of which only \$2,000.00 was paid. Two of the men have backed out and the lands are going back to the original owners. The property is assessed in 1914 at \$5,500.00 and is valued by Mr. Ware at \$20,000.00, or \$5,500.00 more than

the contract price of \$15,000.00, which will never be paid. (Record, p. 424.)

Several years ago a Mrs. Chambers bought Lot 7 in Block 31 for \$700.00. During the boom she sold it for \$3,200.00, \$1,600.00 cash and \$1,600.00 in a mortgage to C. B. Dodge, the man who created this boom (Record, p. 431). Dodge sold for \$5,000.00, getting \$1,000.00 in cash and putting on the property a second mortgage for \$1,000.00. When the instant cases were being tried in the lower court Mrs. Chambers' first mortgage of \$1,600.00 was being foreclosed. The property is assessed in 1914 at \$1,500.00 and is valued by Mr. Ware at \$6,000.00, which is \$1,000.00 more than the amount for which the property sold on contract at the height of the boom. (Record, p. 431.)

On July 30, 1914, Louis Levy entered into a contract to sell his corner, being Lot 1 in Block 15, for \$25,000.00, which included a new brick block, under lease, which building had been placed upon the property since the 1914 assessment was made. Mr. Levy got \$10,000.00 in cash, the balance to be paid in eight years at six per cent. The income from this property on March 1st, 1914, was a little over \$200.00 per month. The property, without the \$8,000.00 brick block, is valued by Ware at \$20,000.00 and is assessed at \$4,500.00. The assessment, of

course, does not show the brick block, which was put up in May, 1914. (Record, p. 597.)

In the summer of 1912 the witness C. C. Henry bought from the witness Ware Lots 4 to 18, inclusive, in Block 66, for \$1,275. (Record, p. 610.) These lots were then assessed at \$590.

In May, 1912, a client of Mr. Haggith bought 30 lots for \$6,200.00, Mr. Ware representing the vendor. (Record, p. 618.) These lots are now the High School grounds and lie within a block of the court house. This sale occurred at the rate of \$200.00 a lot.

Now take plaintiffs' Exhibit "C," which is the map of Port Angeles, upon which Ware placed his valuations, see the position of the High School grounds and the court house; remember that Ware was the broker who represented the seller of this property in the open market in 1912 for \$200.00 a lot, and then examine the valuation which this witness places upon lots which lie beyond it and back toward the mountains.

All this testimony was in and practically the last witness to testify was Mr. Earle. It was not until that time that defendants learned that this suit was based, in large measure, upon the statement of Mr. Ware to Mr. Earle, "that the real

market value of Port Angeles property had not changed, in his opinion, during the last two years.” (Record, p. 697.) Appellants had already introduced in evidence Exhibit “Q,” upon which appear the valuation of the witness Ware of certain real estate in Port Angeles in 1912 and also in 1914. We have added up the valuation which Ware placed upon this property in 1912 and in 1914. As shown by this exhibit, in his opinion, this property in 1912 was worth \$644,850.00, and in 1914 it was worth \$1,188,800.00. Does this look as though “the real market value of Port Angeles property had not changed, in his opinion, during the last two years?” Now that the court has seen, from an examination of all this evidence, how much higher are Mr. Ware’s valuations than the selling price of any of this property, consider the reason for it. This can best be stated in Mr. Ware’s own language:

“Q. (By Mr. Ewing). How do you arrive at the value of the pieces of property as you have put them upon this tabulation?

A. I have valued them on this basis: On the basis of a man owning a piece of property that he would sell but does not necessarily need to sell—would sell at a price that he has in his mind.” (Record, p. 143.)

Res ipsa loquitur.

Not only is this man ignorant and incompetent; not only does he possess the vice of little learning; not only does he assume an ability which a reason-

ably honest man would not care to assume; but when you come right down to the facts of the case, the fellow lived in an entirely different portion of the State during a large period of the time to which he testifies. He lived in Seattle until November, 1912. He attempts to tear apart the real estate assessment of this entire county, which was made six months before he ever became a resident of the county. Appellants realized this weakness in his testimony and tried to get him to testify that he made frequent trips to Port Angeles. The record on this point follows:

“Q. (By Mr. Peters). Mr. Ware, during the time that you were residing in Seattle in the years 1907 to November, 1912, did you have occasion, or did you go to Port Angeles?

A. Occasionally, yes sir.

Q. How frequently, about?

A. I couldn't say; sometimes I went quite often, sometimes I didn't for quite some time.

Q. About how many times a month?

A. Oh, I didn't go there—I couldn't tell you; I haven't the slightest idea.” (Record, p. 143.)

This man was about to testify that he had never been in Port Angeles as often as once a month, nor anything like as often, but caught himself just in time to prevent letting it slip into the record.

On the trial of these cases in the lower court the procedure was adopted of permitting the witnesses

to prepare a tabulation outside of court, which tabulation reflected the witness' opinion of the valuation of the property listed in the tabulation. This procedure was followed by the witness Ware and also by the real estate witnesses produced by the County. Ware placed his values of Port Angeles real estate on a tabulation which appears in evidence as appellants' Exhibit "Q." In order property to understand the exhibit, the court should remember that from the waterfront on Port Angeles Bay there is a flat, in the shape of a semi-circle, surrounded by precipitous bluffs. The important business property in the town is referred to by a number of witnesses as being that which is on "the flat." The residence property, roughly, lies on the higher plateau to the rear. The principal corner in the town is surrounded by the following property: Block 1, Tide Lands East; Block 1, Tide Lands West; Lots 6 to 9, inclusive, in Block 2 East; Block 16 of Norman R. Smith and Blocks 14 and 15 of the Townsite. This is the cream of the business property downtown. This business property is a portion of that which is valued by Mr. Ware on Exhibit "Q." The rest of the property which is described in Exhibit "Q" lies in the form of a border just surrounding the property above described. This property on the fringe of the business district is, of course, less valuable and com-

prises Blocks 17, 31, 30; a portion of Block 2 East; Blocks 18, 19, 20 and 29. Of these eight blocks last described on Exhibit "Q," Mr. Ware indicates that in his opinion the value of every lot had exactly doubled from 1912 to 1914. The downtown business property, according to the valuations placed by this witness on Exhibit "Q," increases less than 100%. In other words, the boom in the cream of the downtown business property, in Mr. Ware's judgment, increases the value of the property immediately affected less than it does the property which is farther out. Exhibit "Q" contains 186 lots on which the witness Ware places a valuation for the year 1912 and 1914. It is remarkable that he just exactly doubles the value of 113 of these 186 lots in the two years. Mr. Haggith testifies that today there is within the incorporated limits of Port Angeles two acres for every inhabitant—man, woman and child—in the town. We have examined Exhibit "C," upon which Ware has placed a value for the greater portion of the property within the town, and we make the sum of his total valuations \$5,121,367.00, and, at that, there are approximately 248½ acres within the city limits which Ware has not valued. Think of it! In a city of 4400 inhabitants, in a townsite so big that there is available two acres for every man, woman and child, the land is supposed to represent a value of over \$1100.00

per capita for each inhabitant. If the court will examine the panorama photograph of Port Angeles (Defendants' Exhibit 16) you will be unable to discover a single street improvement, grade, sidewalk, pavement, sewer, water connection or fire hydrant.

The actual sales of property within the town on the openmarket , subsequent to the boom, at prices which show that the assessment was fairly and honestly made, are all we need to urge upon the court. We have, however, tabulated the results of the exhibits prepared by all the real estate witnesses in the case. We have compared the total assessed valuation of each block with the total valuation as shown by the testimony of each of the witnesses, so that the court can compare the opinion of each witness with the opinion of every other witness. Then we have totaled the assessed valuation of the property concerning which each witness testifies, and have totaled the assessment of all that property and taken that percentage. A comparison of these percentages for the 1914 assessment will be found at the end of this brief as an appendix. It furnishes an excellent shorthand statement of the testimony of the various witnesses. The court will, we trust, examine it. And it will be found, for instance, that the opinion

of Mr. Aldwell of the value of the various blocks concerning which he testifies varies materially from the opinion of Mr. Hallahan, as shown by Hallahans' assessment of the same property. Mr. Haggiths valuations show the same thing, and so do Mr. Levy's. These three men are by far the ablest and most reliable of the five real estate witnesses. Mr. Ware and Mr. Henry being far less reliable than the other three. It will be noticed, time after time, that on any particular piece of property the judgment of Haggith, of Aldwell, and of Levy often varies materially from the judgment of the Assessor, and from the judgment of each other. But notice how machine-made is the testimony of Ware. Where Hallahans' assessment goes up, Ware's value goes up. Where Hallahan's assessment goes down, Ware's valuation goes down. Of the twenty-one blocks which Ware values on Exhibit "Q," it is remarkable that in seventeen of them the percentage between his value and the assessment is practically on a dead level. There is not a difference of five per cent. each way in the RELATIVE values which Ware places on this property as compared with the assessment, for in seventeen of these twenty-one blocks the valuation runs between 21% and 29% of the assessment. The real estate witnesses for the County, however, exhibit no such uniformity in their valuation of any particular property.

But when the total is reached, we find that in Aldwell's opinion the assessment of Hallahan was 50.7% of the value of the property. In Levy's opinion the assessment was a 49.8% assessment. In Haggiths opinion the assessment of Hallahan was a 48% assessment. In Henry's opinion it was a 54% assessment, while in Ware's opinion it was a 25% assessment.

If the valuations of the witnesses for the County had followed each other in a manner to indicate that they were machine-made, and slavishly followed Hallahans assessment, up or down, then it might well be suspected that the assessment influenced the testimony. But when you find, as you will in examining the appendix to which we refer, that the opinion of each witness for the County bear no relation to the assessment of the particular property, nor to the valuation placed upon that particular property by any other witness, but that in the end they all show the assessment of the property to have been practically a 50% assessment, there are only two explanations for the fact. One is, that the witnesses for the County intentionally perjured themselves; and the other is, that they were cognizant of the value of the property, placed their opinions upon it independently, and that they and the Assessor were competent and each performed his sworn duty.

III.

PERSONAL PROPERTY ASSESSMENT

It is alleged in the bills of complaint that appellants caused an examination of the tax rolls to be made, and they found that personal property was greatly under assessed. It was not, however, until the trial of the cases had been practically concluded that any attention was paid to the personal property assessment, except in the matter of the banks.

The attack upon the shingle mill assessment consists of the testimony of E. W. Pollock, who made an appraisement of the mills long after the appraisement made by the assessor, and whose appraisement was not the appraisement required for taxation purposes by the laws of Washington.

“All property shall be assessed at its fair value in money. * * * The true cash value of property shall be that value at which the property would be taken in payment of a just debt from a solvent debtor. * * *

§9212 Rem. & Bal Code. Vol. 2 (Ed. 1910).

His testimony is introduced into the record in the form of a tabulation such as was agreed upon by counsel early in the course of the trials, which is identified as “Plaintiffs’ Exhibit K” (Record, page 204).

The definition of “true cash value” for assess-

ment purposes is the definition given by the courts for "market value," which was the basis for the assessment of 1913 and 1914 under the laws of Washington then in force.

The fallacy of the basis of valuation adopted by this witness is shown in the record; he disavows it himself, and admits that "market value" is less than depreciated value, which is the basis of his appraisal of the mill properties.

(The witness' testimony related solely to the assessment of 1914.)

Cross Examination.

The witness states on defendants' inquiry that he does not know what condition prevailed in March, 1914. (Record, page 200.)

The term, "depreciated value" used by the witness, is the value to the owner and taking into account the wear and tear and obsolescence, which may have occurred, if any, on machines. It means the value to the owner after allowing for what life has been taken out of a machine by use or age. In defining this replacement value they took the property in detail at the present price of material, labor and freight or other elements of value, and from that price of new production they deduct what in their opinion, is the proper amount for deprecia-

tion. They take the present cost price of new materials.

Witness gives the following illustration: If a man buys an engine for \$2500 second hand, that cost originally \$4500, they would put the price down at \$4500, and then depreciate it as they saw fit, according to the wear and tear that the engine showed, or that they could find it had been subjected to, but they would start out on the basis of its being originally a new piece of machinery.

Witness says he knows what market value means. He does not think the market value and depreciated value are the same. The market value assumes that a sale must take place to find out what a thing sells for, while the depreciated value does not make this assumption. In figuring the depreciated value, the property is left in the hands of the owner on the assumption that the property has a particular value to him which generally is greater than that of the market value, and that if the owner would want to turn the property into money he would have to sacrifice something from the depreciated value, ordinarily. Witness could not state the percentage at which he would put the market value below the depreciated value, in the case of these shingle mills. In order to do that he would have to be thoroughly familiar with the

local conditions as to the shingle market in Clallam County.

Witness admits that he is not familiar with local conditions surrounding these mills. "The market value," says the witness, "comes pretty near being a forced sale value, because of conditions, especially in the shingle and lumber business." The supply and demand of shingles, the ability of the owner to make money out of the operation of the mill, his inability to get insurance and make the investment safe—these elements all tend, he says, to make the market value. He would not consider the inaccessibility of the market serious in this case, because shingle bolts would be handy to market.

Witness admits that the market value of these mills is less than the depreciated value, which is put on them. He could not give with this comparison, any percentages.

Witness admits that a great many features enter into the market value of property, such as these shingle mills, that he did not consider in arriving at this depreciated value. He thinks the market value in 1914 would be lower than the depreciated value. The boom would only affect the market value, not the depreciated value.

"Q. Would you be willing to make any approximation of the percentage of what you think

the market value is below the depreciated value? Would you say it is as much as 25%? I am not going to pin you down. I won't embarrass you by cross examination, but I want your honest opinion.

MR. PETERS: As to what time?

MR. EWING: As to the present time first, and March 1, 1914, after that.

Q. (Mr. Peters) Do you know anything about the market value at the time, or at March 1, 1914?

A. No sir, I never heard of a sale of a shingle mill property made in Clallam County. My opinion, if I gave it at all on that, Mr. Ewing, would be based on conditions in other places, rather than in Clallam County, and on my general knowledge of conditions of the mill and shingle industries.

Q. You say, you qualify it, suppose you give it.

A. I would not want it considered as ever well studied out or anything of that kind.

Q. Well we will admit that.

A. Yes sir, I should think that 25% should come as near as any other figure to my idea at this time.

Q. This little pamphlet which you referred to in your remark to me a little while ago is entitled "The over-worked word "Value." Do you recognize that title?

A. Yes sir.

Q. Is it the same little pamphlet which you have?

A. Yes sir.

Q. And you are the author of it?

A. Yes sir.

Q. And in this little pamphlet at page 8, under

the heading at page 7, "Market Value," you use this expression: "The market value of a machine today is one price, and a year later, having been superseded by some other invention, it has only a fraction of its former value, yet the replacement cost would be the same as before." So that statement is true, isn't it?

A. Yes sir, there are conditions where that is absolutely true.

Q. It might happen then that the market value would be pretty nearly nil while the replacement value would still be considerable, as you analyzed those terms?

A. It would not be down to nil, of course, because machinery is always worth something for old iron.

Q. Using that as an illustration, the actual value might be that of junk while the replacement value might be considerable more than that?

A. While they are still using it, I do not think any machine could come down to junk value.

Q. That was between those conditions; I did not want to drive you to that.

A. That is true, to a certain extent.

Q. There might be a very great discrepancy between the market value and the replacement value?

A. Yes sir, there might.

Q. You made this further remark on page 8: "Market values of mill properties are now, and have been for some years, considerably less than the depreciated values, but if there should come a time when for several months or years the market could not be supplied with lumber fast enough to meet the demands, then the market value of saw mills

properties might for a time exceed the depreciated values."

A. That is true.

Q. But under the present condition, for the last six years, the converse of that proposition would be a correct statement?

A. Yes sir.

Q. That the market values of milling property, including shingle mill properties, would be much less than the depreciated value?

A. Yes sir.

Q. That would be true in March 1, 1914, and March, 1912, under general business conditions on the coast?

A. Yes sir. Always taking into consideration that market value is a different thing from the depreciated value."

(Record, pages 204, 205, 206, 207, 208.)

On further cross examination by defendants the witness says that his company is qualified to make appraisal of the market value of such properties as those he testified to, and if appraising property to find its market value instead of its replacement value, would inquire into the supply and demand of the article manufactured by the plant and the profit of the business, (past profits and prospective profits of the business is a line that we do not ordinarily go into), the locality and accessibility of the market and shipping facilities, the accessibility to raw material and cost of labor and all such matters

of that kind. Witness did not make that sort of appraisal in this case, did not go into these details. (Record, page 209.)

The peculiarity of his appraisalment, not assessment, is that it is based solely upon the relation of the parts of a plant to the whole without regard to external conditions foreign to that relation; in fact, it ignores entirely those factors which go to make up market value, which is the only basis of assessment for taxation purposes provided by the laws of Washington.

§9112 Rem. & Bal. Code. Vol. 2, *supra*.

In this connection, reliance is undoubtedly placed by the appellants upon the case of *National L. & M. Co. vs. Chehalis County*, 86 Wash. 483 (488), in which case the testimony of this same witness Pollock largely figured. The court in that case said, however:

“We do not want to be understood as holding that the depreciated value is a universal standard of actual or market value, and we only hold that, under the facts in the present case, the two standards are substantially coordinate.”

The true conditions surrounding shingle mills, as showing the true basis on which the assessment was made, is shown in the testimony of Mr. Hallahan, Record, page 618, *et seq.* It is impossible to read the testimony of Mr. Hallahan, showing the

true condition of these little fly-by-night shingle mills, and feel that the alleged depreciated value bears any real valuation to the market value of these small properties.

The attack upon the assessment of the Puget Sound Mills & Timber Company is made by the same witness, Pollock, whose appraisement was made during the course of the trial, and eighteen months after Hallahan's assessment of the same property (Record, p. 678, *et seq.*). Pollock ascertained the present replacement value of a complete plant in operation to show the error of an assessment at market value of a property entirely incomplete and in course of construction on March 1st, 1914. Such testimony, of course, affords no basis whatever by which to measure the accuracy of Hallahan's testimony. The assessor testified that on the 17th of March, 1914, the mill for the first time had sufficient steam to blow its whistle; on the first of March, he was on the property examining its condition at that time. That he took a memorandum—"I made that memorandum for the information of the board of equalization in 1914. I had the whole thing in concrete form so that they would not have to look over the mill unless they wanted to, or for my own information or information of anybody that would ask me questions concerning it, and for your in-

formation now (handing counsel papers).” (Record, pp. 681, 682.) Counsel for appellants then demanded some other papers which the witness had in his hand, and which it immediately transpired was correspondence with other county assessors in regard to the assessment of this mill:

“Q. They are memorandum that you made in connection with your assessment of the mill?

A. They had something to do with it. * * *

A. It is correspondence with the county assessors.

Q. Correspondence between whom and the county assessors?

A. Between myself and the county assessors.

Q. (Mr. Peters.) In regard to this same matter?

A. In regard to the assessment of mills.

Q. (Mr. Ewing.) Do you want to include any other county assessors in this conspiracy?

A. There is a good chance.” (No response.) (Record, pp. 632 to 634.)

The dearth of manufacturing enterprises within this county is sufficient explanation of an assessment by a man whose lack of familiarity with the particular task is very apparent. The good faith of Hallahan’s assessment is very apparent by his own inquiry of other county assessors with greater experience before he placed in his own assessment. Memorandum which Hallahan had from which he made this assessment ~~had~~^{and} the letters between himself and the other county assessors who advised him in the matter were in court, and upon the discovery

that the assessment had been made in absolute good faith, all further interest of appellants instantly ceased.

Great stress has been laid upon the under-assessment of banks of Clallam county. Upon this question Mr. Hansen testified:

“A. The banks in 1914, in all the years I have been on the board, they have never been mentioned amongst us, and I myself have always been of the opinion that money was not assessed, for some reason—I do not know how I got it—but the banks, for instance, if it stood there for \$3,000.00 it remained there. Its capital stock never came up for our consideration. It was not left unassessed purposely. It was because there was no rule for assessing it. I had always supposed, and I think that the other members are of the same opinion, that it was the same way all over the state. * * * (Record, p. 662.)

Q. Isn't it a fact that the rate of assessment on all the banks of Clallam county is wrong?

A. Sure, they are wrong. They were wrong. I will admit that. There is no use trying to get around it. I admit it. And I admit it because we did not know any better. Our attention should have been called to that. You had plenty of chance to call our attention to it. You have been coming down here right along; but you never called our attention to it, never once. * * * (Record, p. 663.)

Q. You thought the assessment was right?

A. That was my opinion of it, and I found out this way after you stirred up the banks of the county this way, when you went around and subpoenaed the cashiers, then I was told that

the assessment was not high enough; but that is the first I ever heard during my five years as county commissioner that they were not assessed right. * * *” (Record, p. 664.)

Witness further said it was an absolutely innocent act of the board through his inability to properly construe the act; that Mr. Earle, counsel for the plaintiffs, has been coming down to the county for four or five years, and could have set the board right if he wished. “They have always kept an attorney over us. They take good care of us; don’t fear about that.” (Record, p. 665.)

We desire to cite to the court upon this phase of the cases, the following:

“At the trial it was stipulated that about two million dollars on deposit in the banks were not assessed in 1907. The appellants contend that the failure to assess it invalidates the assessment. * * *

The omission of the assessor to assess property, under a misapprehension of the law, will not invalidate the assessment list. It is the same in legal effect as the casual omission of property through a mistake. (Citations.)”

Doty Lumber & Shingle Co. vs. Lewis County,
60 Wash. 428 (433).

IV.

ASSESSMENT OF OLYMPIC POWER CO.

In attempting to establish the under-assessment of the Olympic Power Company appellants offered in evidence a private letter (Exhibit F—Record, p. 157) in which Mr. Aldwell, the president of the company, stated that it had installed a hydro-electric plant at a cost of \$1,350,000. This letter was received over the objection and exception of respondents that it was hearsay and not a declaration of a co-conspirator, unless complainants would agree to subsequently connect up the writer of the letter as a member of the conspiracy. Appellants refused so to do and the court, with serious doubts as to its competency, admitted the letter. (Record, pp. 155-6, 174-6.) The witness subsequently testified that his plant was erected in the fall of 1910, a dam being built across the Elhwa River; that on October 30, 1912, the foundation of the dam for a distance of 90 feet went out and let practically the whole river flow through. Repairs to it were not completed until September or October, 1914. They were generating power in December, 1913, but there was so much seepage going through at that time that they were not sure that they had a dam until they made a further hydraulic fill, which was not completed until the fall of 1914. On March 1st, 1913, and also

on March 1st, 1914, the conditions resulting from the blow-out had made the property of very doubtful value. Around Port Angeles they were not optimistic. Mr. Earles and several other people told Mr. Aldwell that they did not think it would stick, and that was the general impression around there. (Record, pp. 177-8.) Of the valuation of \$1,350,000 about half a million dollars was the cost of repairing the blow-out. Deducting this \$500,000, the witness testified that "with the engineering and everything it (the plant and system) cost approximately \$650,000, somewhere around that." (Record, pp. 160 to 161.)

The witness was also interrogated about a report to the Public Service Commission of the State of Washington which was prepared in the spring of 1915 showing a valuation of the property as of December 1st, 1914. This was also admitted in evidence as complainants' Exhibit "H," under the same objection which was made to Exhibit "F," namely: That it was hearsay testimony and was inadmissible as the declaration of a co-conspirator unless complainants would assure the court that testimony to be introduced later would couple up the witness as a member of the conspiracy. In admitting the testimony the trial court stated:

"I am inclined to think there is grave doubt

about its admissibility. A case that is tried to the court that is very liable to be appealed, it is better to make a mistake in admitting too much so the appellate court can disregard it if it thinks it objectionable, than to admit too little and then have the appellate court finally set it aside and send it back to be tried all over again. I overrule the objection and admit it. I am inclined to think myself I will disregard it. * * *

Exception was taken to the ruling of the court. (Record, pp. 174 to 177.) The statement of this witness as to the pessimism of the local people on the question of the value of this property is corroborated by Mr. Hansen (Record, pp. 658-660). And there is no testimony to the contrary. If the \$500,000 which was being poured into this dam at the time of the assessments for 1913 and 1914 was wasted to "go like a milky cloud, go down the river" (Record, p. 660), the assessor certainly was justified in assessing the land the same as the surrounding farm lands and the improvements thereon as so much wasted money. To have assessed the property at that time in accordance with the values which should be placed upon it in the light of future developments would have required the genius of a seer and prophet. If the failure of the County Assessor to possess the prescience which appellants are able to exhibit after the fact, is corrupt and criminal, then the assessment of this plant must bear the

impress of fraud. Appellants suggest that the “temporary” washout of this company’s dam might excuse the assessor in making a “liberal reduction” in his assessment. An attorney who is accustomed to receive fireside equity at the hands of the courts where everybody gets a little and nobody is satisfied is the only person who would think of making such an argument. To a county assessor, however, the property must be assessed on some basis. Either it is valuable as a power plant, or it is not. And, under the concession of appellants that the County Assessor would not have been justified in assessing the property as a power plant, the “liberal reduction” which they consider he might have made can only have one other basis in honesty, and that is a valuation of the real property in the same ratio as that surrounding it.

If the appellants are unable to suggest a basis for the “liberal reduction” which they consider should have been made, how can they expect the court to be more zealous in their behalf?

V.

THE ALLEGED CONSPIRACY.

The charges of conspiracy in the bills of complaint are sought to be established principally by the

testimony of one E. H. Grasty, a resident of Portland, Oregon, who was procured by Earle & Steinert, counsel for the appellants, to go to Port Angeles in their behalf. Under the assumed guise of an investor and loan agent, he sought out a great many of the residents of the town, including most of the county officials, and interviewed them at greater or less length upon the conditions of the local real estate market. He testified that his object in going to Port Angeles, in Clallam County, in the first instance was actually to ascertain the values of real estate, and also to look into the matter of loans and investments; that his attorneys, Beebe & Whitcomb, of Seattle, had previously spoken to him about Clallam County, and stated to him that some time he ought to go there and look over that part of the country for the purpose of obtaining an investment, and that he went there for that purpose (Record, pages 233 and 234). That his mission was not to discover and establish facts, but to mislead and entrap county officials and citizens of Clallam County into what he considered damaging admissions to be used in these cases in connection with other matters about which he approached them as his real object and purpose, is abundantly established in the record by his own testimony (Record, pages 209-232). In all of his interviews with residents of Clallam County,

Grasty obtained from them statements and alleged admissions, with which they were afterwards confronted in court, by assuming to interest them in projects with which the assessment of timber lands had not the slightest connection. He directed the conversations into channels which while ostensibly referring to the particular subject under discussion, brought into them by indirection and inference the assessed valuation of Port Angeles real estate and the discrepancy between those assessed values and the prices the people were putting upon their property. The witness denies that he attempted to direct the conversation in any way (Record, pages 238 and 239), but his statement in that regard is refuted by his own testimony, where, on page 216 of the record, regarding his interview with Mr. Hansen, he testifies as follows:

“A. Yes, sir, I did. I told him I had understood that these properties were worth a certain amount of money, and that there was such a discrepancy in their actual value and their assessed value that it naturally called for an explanation from someone who knew.”

On page 225 of the record, regarding his interview with Mr. Lutz, he testifies as follows:

“I made the statement to Mr. Lutz that the assessed values of property in Port Angeles and the real values were somewhat at variance, in fact, so much so that it would raise

a question in the minds of anybody that was going to loan money on the property there of the safeness of the loan."

and, regarding his interview with Mr. Christensen, he says (Record, page 226):

"I said, 'Do you know what this property is taxed for?' He said, 'I don't know, but it will be a very easy matter to ascertain,' which I did."

On page 231 of the record, testifying regarding his interview with Mr. Henry, he states:

*"I made it a rule to ask everybody for their tax receipts. I made it my business to ask everybody who applied for a loan to show their tax receipts in order that I might know the actual taxes they were paying. * * * And I said to him, 'Mr. Henry, why is there such a wide difference in the assessment of the Port Angeles property, they being so low here and your being assessed at much higher rates in the timber section.'"*

The manner in which Grasty always endeavored to direct the channels of the conversation into the matter of an apparent discrepancy between real and assessed values in Port Angeles real estate is shown by the testimony of the witness Babcock, record page 451, and by the testimony of the witness Hallahan, record pages 481 and 482.

As illustrated by the testimony referred to above, all of the statements made by all of the parties with reference to actual and assessed valua-

tions in Clallam County were obtained under circumstances where the attention of the person with whom Grasty was dealing was not directed except incidentally to that matter; all of the conferences had in which the matter figured at all were primarily directed to some enterprise in which Grasty's informant was directly and vitally interested, and in which he appealed to some well known trait of human nature, cupidity, civic pride and the like, as for instance, the statements he obtained from parties whom he interviewed regarding the proposed loan of forty thousand dollars for the purpose of erecting the Elks' Lodge building were incidental to the matter which was then primarily engaging the attention of the persons with whom he conversed. Some of the other witnesses he talked to were seeking him either for loans of money or sale of properties owned by them, and under such circumstances any person whose judgment as to values of property is inferentially questioned by comparison with assessed valuations as shown upon the official records will make a scapegoat of the assessor and insist that his own judgment is right and that of the assessor is wrong. Such statements do not, however, establish the fact of an erroneous assessment; they are not even of the character which would make them competent as impeaching evidence, because not made in connec-

tion with the subject of the litigation. And, as stated by the trial court in ruling upon an objection during the course of the trial, "I think the opinion the witness made at this time on oath is better than representations made for the sale of bonds and building buildings and the like." (Record, page 176).

The statements of the persons interviewed by Grasty did not establish the facts of the matters regarding which they are made—in their strongest aspects they constitute merely expressions of opinion; and in this connection it is to be noted that all of the statements with reference to discrepancies between assessed and actual valuations of property, both those contained in the letters signed and acknowledged by the persons who wrote them, and those made during the course of conversations with Grasty, to which he testified, are not of the significance attached to them, nor will they upon analysis bear the import accredited to them by the appellants in these cases, for in making such comparisons, both Grasty and the persons with whom he talked were necessarily misled by the fact that the values regarding which they made the statements were values incident to the temporary and artificial condition which obtained during the very brief period of the boom, and the assessment with

which they were compared was not the current assessment of the year 1914, but the one of 1912, made two years previously, and measured by that standard of comparison, the statements might very properly have been made in all honesty by the persons whom Grasty interviewed during the course of conversations in which the specific subject of the conversation was the matter of such discrepancies in valuations. If it were possible to ascribe to Grasty honorable motives and genuine purposes, it is easy to see how he, a resident of a foreign state (Grasty being a citizen of Oregon), could be misled by his lack of knowledge of the fact that real estate in Washington is assessed only biennially, and by the requirement of the Washington taxing laws under which the assessment of 1913 was made, that all property should be assessed at its true and fair value in money, and by his subsequent apparent discovery that one assessor in the State of Washington was disregarding the apparently plain mandate of the statute and making assessments upon percentages of actual value, unless it were explained to him that such custom universally obtained and that it had received the inferential sanction and recognition of the courts of this State. The disadvantages that he was laboring under by reason of the lack or imperfection of his knowledge is illustrated by his cross examina-

tion on page 249 of the record, and by the testimony of the witness Hallahan on page 495 of the record:—

“A. There may have been a difference between the assessed value and the real value, at that particular time, because he was looking at the 1912 assessment, and this was the year 1914.”

So that if the statements of the persons interviewed by him were made to Grasty under circumstances which would have entitled them to be properly considered as evidence in these cases, and the truth of the statements were admitted, still they would not establish the fact of either an erroneous or a fraudulent assessment upon the full showing of the actual circumstances which obtained at the time of those interviews.

It may be noted in this connection that Grasty in his testimony regarding his interview with John Hallahan, the assessor, apparently over-reached himself in an effort to be specific, because Grasty's account of his conversation with Hallahan stated on page 211 of the record is as follows: “Mr. Hallahan stated to me, he said, ‘Mr. Grasty, if I were to assess the property here *for fifty per cent.* of its real value, I would break every property owner in Port Angeles, and I have sworn to do my duty.’ ”

King's account of the same conversation is shown on page 255 of the record, as follows:

“And the question was asked by Mr. Grasty to Mr. Hallahan, he says, ‘I want to know what the assessed value of Port Angeles property has to do with the real value,’ and Mr. Hallahan replied, ‘That the assessed value had nothing to do with the real value; that it was assessed for very much less than its real value; that if it was assessed *acocrding to its real value* it would break some of the property holders to pay the taxes.’”

Either Grasty is wrong when he testifies that Hallahan referred to a fifty per cent. valuation, or King is wrong when he said that Hallahan's statement referred to real value, or else appellants' argument is wrong where they assert that the theory of a fifty per cent. valuation upon the assessment was evolved by the appellees during the course of the trial of this case.

Grasty's account of his meeting with Hansen is shown on page 215 of the record; Hansen's account of the same meeting is found on pages 525-526. Grasty's account of his meeting with Babcock is shown on page 219 of the record, and Babcock's account of the same meeting is found on page 448. Grasty's account of his meeting with Lotzgesell is shown on pages 220-221 of the record, and Lotzgesell's account of the same meeting is shown on pages 530-531. Grasty's account of his meeting

with Lewis Levy is shown on page 222 of the record, and Levy's account of the same meeting is shown on page 589. Grasty's account of his meeting with Henry is shown on page 231 of the record, and Henry's account of the same meeting is shown on page 600. Grasty's account of his meeting with Keeler is shown on page 229 of the record, and Keeler's account of the same meeting is shown on page 551.

All of the witnesses testifying in contradiction to the testimony of Mr. Grasty regarding the interviews which he had with them denied unequivocally the statements imputed to them by Grasty regarding any fraudulent agreement, conspiracy or understanding of any sort among the county officials with reference to the assessment of property in Clallam County. Even had Grasty's testimony relating to allegations of fraud on the part of the taxing officials of Clallam County stood undisputed and uncontradicted by the very persons accused of having made those statements, the statements themselves would not have established the conspiracy. Conspiracy is a fact to be proved and capable of being proved just like any other fact.

If Grasty's testimony should have been subsequently corroborated by that of other witnesses, residents of Clallam County, who would testify

in such a way as to raise a presumption that a fraudulently high assessment of timber lands or fraudulently low assessment of other property in the county were matters of common repute and knowledge in the community, then Grasty's testimony would be entitled to some weight and consideration, but standing alone as it does, without corroboration, either specific or circumstantial, it means nothing at all. It is preposterous to suppose that men actually guilty of the fraud charged in the bills would be announcing it without reserve to strangers like Grasty in terms of such particularity as he has quoted, but assuming that they did, and that they were unreserved and open in their declarations, then the conspiracy would have become a matter of common knowledge in the county, or at least in Port Angeles and the substantiation of it could have been had by the testimony of Port Angeles citizens, none of whom were called, as noted later.

“If the construction of the quoted letters and alleged conversations contended for by plaintiffs was conceded, it would be far from clear that the county officers attacked by them spoke truthfully. The plaintiffs presuppose the dishonesty of these officials and contend that, in order to build up the Town of Port Angeles, the western part of the county was dishonestly and fraudulently discriminated against in the matter of the assessment.

As the inducement held out in his talks

with these officials by Mr. Grasty was exactly towards the same end—that is, the improvement of Port Angeles by the loaning of money on the property therein—if it be presupposed that these men would act fraudulently in the one instance, it would not be unreasonable to suppose that they would do likewise in the other.

In their relations with Mr. Grasty, the contingency of gain by reason of the statements to him was imminent, and the restraint concerning misrepresentations as to what they had therefore done as officers was remote. The burden upon the plaintiffs is to show that these officials acted fraudulently in the particular matter of these assessments, and not that they may not have been honest men at all times.

Their action in making these assessments was under sanction of an oath, while their conversation with Mr. Grasty were more in the nature of traders' talk.

Olympia v. Stevens, 15 Wash. 601."

(Memorandum Decision, Record, page 825).

The case of *Olympia v. Stevens*, 15 Wash. 601, cited by the trial court, was a case in which a property owner of the City of Olympia attempted to resist the foreclosure by the City of the lien of certain delinquent local improvement taxes assessed against his property; the defense being founded upon the allegation that the Board of Equalization had, in pursuance of an illegal combination, fraudulently raised the value of the property as returned by the assessor; that the increase of valuation was not for the purpose of equalizing the

value of the property of the City, but for the purpose of increasing its total valuation, to the end that larger indebtedness might be incurred. We quote from the decision as follows:

“To show improper action on the part of the board of equalization, evidence was introduced which tended to show that the valuation made by the assessor was nearer the cash value of the property than the valuation placed thereon by the board of equalization, and that statements had been made by three or four of the members of such board to the effect that it was necessary to place a high valuation upon the property of the city to enable it to meet necessary obligations.

It is not necessary to decide the effect of statements by the members of the board that such board would raise the value of the property beyond what was believed to be its cash value, for the reason that none of the statements proven fairly warrant the assumption that any such action was intended. The statements testified to did not show any such illegal intention. The most that they tended to show was that, by reason of the financial condition of the city, it was necessary that its property should be kept at a high valuation, and there was not a suggestion even that, for that or any other reason, it was the intention of the board to value the property at a higher sum than they considered it to be worth. But even if some of the statements would have warranted the inference that such was the intention, it was at most but a rebuttable inference, and was so clearly overcome by the positive evidence of the members of the board as to their action that a finding in accordance with such inference cannot be allowed to stand.

It will not do to convict public bodies, the

members of which are acting under the sanction of an oath, of improper action, without proof which can be fairly explained upon no other hypothesis than that of such improper action. The facts shown by the evidence, construed most strongly against the board, can all be harmonized with proper action on their part, and this being so *it must be so harmonized.* That part of the proof which tended to show that the value of the property was less than that placed upon it by the board of equalization was without force, except that, in connection with other facts, it might have had a tendency to show fraudulent action on the part of the board of equalization. No question of fact could be presented as to the value placed upon the property unless it was first shown that the action of the board in valuing it was illegal or fraudulent. In our opinion the city made out a *prima facie* case, and it was not overcome by the proof offered on the part of the defendant." (Italics ours).

(*Olympia v. Stevens*, 15 Wash. 601, 603-605.)

Not only that such fraudulent acts and conduct on the part of county officials were not generally rumored, gossiped about, or known of in the community, but that the same did not actually exist in fact, is conclusively established by the express testimony of the respondents' witness Merrill on page 371 of the record, the witness Brown on page 439, the witness Babcock on page 448, the witness Hallahan on page 480, the witness Hansen on page 525, the witness Lotzgesell on page 530, the witness Keeler on pages 556-7, the witness Levy on

page 592, the witness Henry on page 601, the witness Dick on page 667, the witness Warren on page 670, the witness Prickett on page 671, the witness Wood on page 677, the witness Adams on pages 723-724-725, the witness Garlick on page 736, and the witness Christensen on page 752.

The political complexion of the membership of the Board of Equalization in 1912 and 1913 would raise a presumption against the possibility of such a conspiracy. In 1912 and 1913 the Board was composed of Hansen, Erickson, Lotzgesell, Hallahan and Babcock, all being Republicans except Hallahan, who is a Democrat. In 1914 the same Board was composed of Hansen, Clark (who had succeeded Erickson as the commissioner from the timber district), Lotzgesell, Babcock and Hallahan, the Board in 1914 comprising four Republicans and one Democrat. In the political campaigns which resulted in the election of the officers constituting these two Boards, vigorous campaigns both at the primaries and at the general elections were waged by opponents seeking either nomination or election of the men who were successful at the final election, and it is impossible to doubt that in the heat of political campaigns, if facts had actually existed like those charged in the bills, they would have been taken political advantage of by

one faction or the other striving for success at the polls. Of those witnesses testifying in behalf of the defendants who are not county officials, it is to be noted that Merrill is a Republican, Shields is a Democrat, Brown is a Republican and the present chairman of the Republican County Central Committee, Keeler is a Democrat, Levy has been a Democrat, a Republican and a Progressive, Henry is a Republican, James Dick is a Republican, and all the present county officials are Republicans, and yet none of the men (all of whom have been residents of Clallam County for periods ranging from seven or eight to thirty or thirty-five years) during the course of the political campaigns with which they were all familiar had ever heard such rumors as those to which Grasty testified, and they all denied that in their belief the conditions to which Grasty testified had actually existed. In addition, it will be recalled that an organization known as the Tax Payers League was sought to be saddled by the plaintiffs during the trial of these cases, with the purpose and design of influencing officials of Clallam County in the matter of the taxation of the timber lands of the county, but the testimony of Shields on page 438 of the record, of Lotzgesell on page 535, of Keeler on page 552, and of Dick on pages 666 and 667 utterly refute any such imputation, and affirmatively establish the fact

that on more than one occasion the Tax Payers League was working not in opposition to the timber interests, but in conjunction and cooperation with their representatives.

But it may be argued that it can not be expected that any residents of Clallam County will testify in such a way as to discredit any of their past or present county officials, or in such a way as to impute to them delinquencies in their official duties like those charged in the bills, that the conspiracy charged in these bills is a political conspiracy, and that it is designed in its operation particularly for the benefit of Port Angeles and the eastern end of the county whence most of these witnesses come. The allegations of the bills in this regard, and the argument which would be based upon these allegations and the alleged proof of Grasty bear within themselves their own refutation by reason of their very patent absurdity.

Such a condition as that which is conceived in these allegations of conspiracy is impossible of actual existence. The least knowledge of human nature and political conditions, particularly American human nature and American political conditions, would preclude the possibility of such close-mouthed secrecy and concerted action upon the part of a whole community as that which must

be presumed if the allegations of conspiracy are to be substantiated by the testimony of Grasty. It is impossible of comprehension that there is in the whole population of Clallam County not one single honest, upright American citizen who could and would come into court and testify that such a conspiracy as that charged in the bills did in his opinion actually exist.

At this point the observations of the Supreme Court of the United States in its decision of a tax case involving charges of political conspiracy become singularly pertinent.

“The bills allege that the board, coerced by political clamor and its fears, arbitrarily determined in advance to add about nineteen million dollars to the assessment of railroad property for the previous year, and then pretended to fix the values of the several roads by calculation. They allege that the assessments were fraudulent and void for want of jurisdiction, and justify these general allegations by more specific statements. One is that other property in the state, especially land, was valued at a lower rate than that of the railroads. * * * Demurrers to the bills were overruled, mainly, if not wholly, on the ground of the charges of duress and fraud. * * *

The dominant purport of the bills is to charge political duress, so to speak, and a consequent scheme of fraud, illustrated by the specific wrongs alleged, and in that way to make out that the taxes were void. As the cases come from the circuit court, other questions beside that under the Constitution are open, and,

therefore, it is proper to state at the outset that the foundation for the bills has failed. The suggestion of political duress is adhered to in one of the printed briefs, but is disposed of by the finding of the trial judge, which there is no sufficient reason to disturb. The charge of fraud, even if adequately alleged (*Missouri v. Dockery*, 191 U. S. 165, 170, 48 L. ed. 133, 134, 24 Sup. Ct. Rep. 53), was very slightly pressed at the argument, and totally fails on the facts. Such charges are easily made and, it is to be feared, often are made without appreciation of the responsibility incurred in making them. Before the decree could be reversed it would be necessary to consider seriously whether the constitutional question on which the appeals are based was not so pleaded as part of the alleged fraudulent scheme that it ought not to be considered unless that scheme was made out."

C. B. & Q. R. Co. v. Babcock, 204 U. S. 585, 51 L. ed. 636 (638).

In regard to the alleged conspiracy the appellants' record in this case is much more eloquent and convincing by its omissions than in its recitals, for it affirmatively appears that there *are* residents of Clallam County who are friendly enough disposed toward these appellants to come into court to testify in their behalf. The witness Rixon was their own witness—a friendly witness—a man who at the time he was testifying was, and who for fourteen months prior to that time had been, in the employ of the appellants (Record, pages 101-102), and at the time these actions were first

started on the 29th of May, 1914, was, and for eighteen months prior to that time had been, in the employ of the county as the chief engineer upon the construction of their highways under the bonding system—that would have made him an employee of the county from the month of January, 1913. A part of the charge of conspiracy in the bills is sought to be substantiated by proof that the purposes of the county officials of Clallam County in assessing the timber lands of the county disproportionately was to cast upon the owners of those lands the larger part of the burden of paying the bonds voted to construct the very highways upon which Rixon was the engineer. (Testimony of Darwin, Record, page 145; testimony of Hansen, Record, page 639; and testimony of Grasty with reference to his conversation with Keeler, Record, page 230).

If such a design as that imputed to them were actually in the minds of the county officials, and there was the same loose talk about that design and purpose that Grasty's testimony would lead one to believe, is it not reasonable to suppose that some knowledge, or at least some gossip would have reached the ears of Rixon? He was a resident of the west end of the county, among those timber lands against which the alleged conspiracy was

intended particularly to operate. If the statements and gossip about the fraudulent intent and purpose of the county officials in the matter of taxing the timber lands were so generally known and commented upon, Rixon is one of the first persons who would have had knowledge thereof, because he was engaged in the very work which was a part of the alleged object and purpose of the conspiracy. If there was anyone in Clallam County who should have known about such conspiracy as that charged, Rixon was the man, and the appellants did not ask him a single question about such a conspiracy.

The witness Earl C. Douvall could not be called a hostile witness to the appellants. He testified to timber valuations as one of their expert timber men. He is the man under whose supervision and charge these cruises which have been introduced in evidence, and which are necessarily a factor in the alleged conspiracy, were made. In 1911, 1912 and 1913 he had charge of, and was engaged in making the very cruise upon which the taxes were levied for those years (Record, page 124), a cruise of the timber which everybody knew was for taxation purposes, a cruise which kept him constantly in touch with the assessor's office, and with the Board of County Commissioners who were paying him a salary—if gossip about a taxation conspiracy was prevalent, is it not likely that some boast or

idle remark indicative of an intention to discriminate against the timber men would have reached his ears at some time during those three years? He was asked nothing about the existence of such a conspiracy in substantiation of the gossip which Grasty related.

If the witness Ware was by length of residence and familiarity with local conditions sufficiently qualified for these appellants to rest their whole proof of real property valuations in Clallam County upon his testimony, in acquiring such familiarity, is it not reasonable to suppose that some gossip or rumor or report of fraudulent conduct upon the part of the assessing officers and the Board of Equalization of Clallam County would have reached his ears? It can not be urged that he is a hostile witness, because the mathematical precision of his testimony and the machine-like regularity of his appraisements of property at fixed percentages more than the assessment thereof are altogether indicative of the most friendly attitude of mind and disposition towards these appellants. During all the time that this man Ware was on the stand, and during the entire course of the voluminous testimony that he gave, no question was asked him about the existence of such conspiracy or fraud as that charged in the bills.

If they could trust Rixon to testify honestly regarding railroad construction, and Duvall to testify honestly regarding timber valuations, and Ware to testify honestly regarding real estate valuations, couldn't they trust them to tell the truth about a political conspiracy?

One K. O. Erickson was commissioner from the west end—the timber end—of the county, and was chairman of the Board of County Commissioners from 1910 to 1912, the very period specifically covered by the allegations of the bill as the time when the conspiracy was rife—if anybody could know of fraud among county officials in the matter of the assessment and the equalization of taxes as charged in the bills, K. O. Erickson would have been the man, and it can not be said that he is an unfriendly or a hostile witness, because the record shows that K. O. Erickson was actively assisting these plaintiffs in the same class of work as that done by Grasty. Erickson is the man who endeavored in conjunction with Grasty to compromise Keeler and Lotzgesell in the matter of fixing a definite and excessive sale price for the ostensible purchase of the Lotzgesell farm near Dungeness. The details of Erickson's connection with this feature of the case are shown in the record, pages 549-550. And yet, Erickson who in the bills is exoner-

ated from complicity in the fraud, is not called as a witness at all.

In Dan Earle's testimony (Record, page 693), it appears that he had some information "secured from Mr. Horace White and Mr. John M. Bell, both of them real estate men in Port Angeles," which information was reported by Mr. Earle to the appellants. If these two men, White and Bell, had been residents of Clallam County a long enough time to justify Mr. Earle in relying upon their information as to realty values in Clallam County, is it not reasonable to suppose that they could have advised him regarding gossip or current report as to fraudulent conduct on the part of county officials in the matter of the assessment and the equalization of taxes in Clallam County? Neither of these men was called.

Is it reasonable to suppose that the appellants in these cases are so possessed of occult powers and superhuman sources of divination that they have *peculiar* knowledge and information regarding fraudulent conduct on the part of assessing officials of Clallam County which is denied to other timber owners identically situated? It appears from appellees' Exhibit 18, the colored map of Clallam County showing the holdings of all the larger timber owners in the county, introduced into the record

at page 258, and appellees' Exhibit 27, the list of larger timber companies who have paid their taxes for the years 1913 and 1914, introduced into the record at page 304, that the Milwaukee Land Company, the Illinois Timber Company, the Henry & Larson Lumber Company, Conewango Lumber Company, the Bradley Estate Company, and James W. Bradley are all owners of timber lands not in the Straits zone, the zone alleged in the bills to have been the favored zone, but in the same zones with these appellants, owning timber lands situated side by side with those of the appellants, and all have paid without protest their taxes for the years which are disputed by the appellants upon the acreages and in the amounts set forth as follows:

	Number of Acres.	1913 Tax.	1914 Tax.
Milwaukee Land Company	70,467.47	\$47,015.85	\$38,243.30
Illinois Timber Co....	12,284.94	5,776.73	5,323.34
Henry & Larsen Lbr. Co.	17,743.27	13,715.82	9,060.50
Conewango Lum- ber Co.	8838.89	9,838.60	5,739.84
Bradley Estate Co.	17,089.01	6,504.04	5,647.74
Jas. W. Bradley....	17,645.01	6,566.00	5,117.23

The fact that these other timber owners have paid their taxes upon the same assessment and basis of valuation as the appellants may properly be taken into consideration by the court as an evi-

dence tending to disprove fraud or even erroneous judgment of the assessor.

“Some 46 mills were assessed for the year 1913 in the same manner. Of these, nine or ten have contested the assessment. While the fact that the other thirty-six have not complained of their assessment is not evidence that the depreciated value of the appellants’ plant is its market value, it yet may be referred to as showing that the standard used was not generally, by mill owners, regarded as incorrect or unjust.”

National Lumber & Manufacturing Co. v. Chehalis County, 86 Wash. 483 (488).

Is it to be assumed that if the conspiracy charged in the bills actually existed and the fraudulent conduct alleged in the bills were actually operating to the loss and detriment of the appellants in the manner charged in the bills these other timber interests, affected in just the same way, would not have discovered and resented a system which cost them thousands of dollars yearly in taxes, and would they not now be here in court complaining if these facts asserted by the appellants actually existed? These things are more significant in their silent negation than all the weight of the most positive assertions of fact made anywhere in the record by all of the appellants’ witnesses collectively.

VI.
ANSWERS TO APPELLANTS'
CONTENTIONS.

THE LAW OF THE CASES.

Much space is devoted in appellants' brief and many authorities are cited in support of arguments advanced therein with which the appellees have no quarrel. The basic propositions of law which govern these cases have been established by a long line of well-considered decisions.

If upon a consideration of the evidence the court should find the property of the appellants to be over-assessed as compared with other like property, and that such over-assessment is the direct result of a conspiracy by the assessing officers, or should there be such a palpably excessive over-valuation as to amount to constructive fraud, then the appellants are entitled to equitable relief. The law entrusts the assessment and taxation of property to the officers charged by it with that duty, and the courts will in no case constitute themselves assessing officers for the purpose of correcting mere errors in judgment; nor will they assume the onerous duty of making a re-assessment unless it is clearly shown that the assessment complained of is a result of fraud, express or constructive.

The principles to which we have adverted and

the authorities supporting them are as follows:

I.

Mere over-valuation or inequality is not sufficient to warrant the interposition of equity, and the courts will not interfere to alter an assessment unless the assessment is palpably excessive, or fraudulent, arbitrary, capricious, collusive or oppressive conduct upon the part of the assessing or equalizing officers is shown.

“The question of value is largely one of opinion, and in cases like the present the law has confided to the taxing officers authority to determine values. It is only when the board acts maliciously or fraudulently, or without affording the property owner an opportunity to be heard, that their conclusion as to values will be disturbed.”

Edison Electric Ill. Co. vs. Spokane County,
22 Wash. 168 (171).

“The mere over-valuation of property by the assessor, if he acts in good faith, and in the honest exercise of his judgment, furnishes no ground for relief in equity. For excessive assessments, unless fraud is established by the proof or may be presumed from the circumstances, equity furnishes no relief and the remedy must be such as the statute has given. * * * This is the general rule, and we think the decisions of this court are in harmony with the same.”

Templeton vs. Pierce County, 25 Wash. 377
(378).

“Where the assessing officer has exercised an honest judgment and no fraud or arbitrary

or capricious action in making the assessment is shown or can be presumed, the court will not interfere. Where it appears that the assessing officers endeavored honestly to get at the true value and there is an honest difference of opinion as to the value, the judgment of the officer is *conclusive*. If property, even if over-valued, is assessed in the same proportion as other like property within the jurisdiction of the assessing officer and the system of valuation adopted operated equally on all other property, the constitutional provision as to uniformity of taxation is complied with." (Italics ours.)

Templeton vs. Pierce County, 25 Wash. 377 *supra* (382).

"The evidence also satisfactorily shows that the assessor made reasonable effort to ascertain the true cash values and that he exercised his best judgment in fixing the same. No fraudulent, arbitrary or capricious action of the assessor is shown and within the rule of *Templeton vs. Pierce County*, 25 Wash. 377, appellants are not entitled to the relief which they seek."

Carlisle vs. Chehalis County, 32 Wash. 284 (289).

"Of course, slight or even considerable differences in valuations are not sufficient when honestly made to authorize the court to set aside an assessment."

Henderson vs. Pierce County, 37 Wash. 201 (202).

"In *Templeton vs. Pierce County*, 25 Wash. 377, 65 Pac. 553, the decisions rendered prior to that time were summarized, and the principles governing the action of the courts were re-stated. It was there said that fraud, capriciousness, or want of the exercise of an honest judgment on the part of the assessing officers

was ground for interfering with the action of the officers, if the assessment made was grossly disproportionate to the value of the property assessed, or unequal when compared with the assessments on other property of like kind; but that mere over-valuation, unless the excess was so gross as to impute fraud on the part of the assessing officer, was not a ground for interference; that the assessor in placing valuations upon property acts in a quasi judicial capacity, and the law presumes that he has performed his duty in a proper manner; that this presumption is liberal, and the evidence to overthrow it must be clear."

Northern Pacific R. Co. vs. Pierce County, 55 Wash. 108 (111).

"For the purposes of this opinion it will be assumed, but not decided, that when the question is one of quantity the same rules of law apply as when the controversy is over the value in determining the right or power of the court to review an assessment as equalized by the board of equalization. The general rule is that since the board of equalization acts in a quasi judicial capacity its findings will not be disturbed in the absence of a showing that its action was arbitrary, capricious or that there was fraud either actual or constructive."

Simpson Logging Company vs. Chehalis County, 80 Wash. 245 (248).

"In no case has this court ever interfered with an assessment of property for purposes of taxation upon the sole ground of excessive assessment, in the absence of a showing of actual fraud on the part of the taxing officers, where the difference between the assessed value and the actual value was as small as ten per cent. We conclude that we should not interfere in this case, however strong the proof might be,

as to the actual value of the property being only ten per cent less than the amount it is valued by the proper assessing authorities—that, necessarily, being a question of opinion, and there being practically no other fact upon which to raise an attribution of fraud to such assessing and equalizing authorities.”

Northern Pacific R. Co. vs. State, 84 Wash. 510 (544).

“I think it is not within the power of the court of equity to enjoin the collection of the tax simply because of an inequality in valuation; and this as well when the error arises from the adoption of the valuing officers of a wrong rule applicable to many cases as from a mistake in judgment as to a single case. The valuation as finally fixed by the proper officers or equalization board, under the law, is in my opinion, conclusive when there has been no fraud.”

Cummings vs. National Bank, 101 U. S. 153, 25 L. Ed. 903 (907).

“In nearly all the States, probably in all of them, provision is made by law for the correction of errors and irregularities of assessors in the assessment of property for the purposes of taxation. This is generally through boards of revision or equalization, as they are often termed, with sometimes a right of appeal from their decision to the courts of law. They are established to carry into effect the general rule of equality and uniformity of taxation required by constitutional or statutory provisions. Absolute equality and uniformity are seldom, if ever, attainable. The diversity of human judgments, and the uncertainty attending all human evidence, preclude the possibility of this attainment. Intelligent men differ as to the value of even the most common objects before them—

of animals, houses, and lands in constant use. The most that can be expected from wise legislation is an approximation to this desirable end; and the requirement of equality and uniformity found in the Constitutions of some States is complied with when designed and manifest departures from the rule are avoided.

To these boards of revision, by whatever name they may be called, the citizen must apply for relief against excessive and irregular taxation, where the assessing officers had jurisdiction to assess the property. Their action is judicial in its character. They pass judgment on the value of the property upon personal examination and evidence respecting it. Their action being judicial, their judgments in cases within their jurisdiction are not open to collateral attack. If not corrected by some of the modes pointed out by statute, they are conclusive, whatever errors may have been committed in the assessment."

Stanley vs. Supervisors of Albany, 121 U. S. 535 (550), 30 Law Ed. 1000.

"The law of New Mexico requires property to be assessed at its cash value. Confessedly, this plaintiff's property was assessed at fifteen per cent below that value. Surely, upon the mere fact that other property happened to be assessed at thirty per cent below the value, when this did not come from any design or systematic effort on the part of the county officials, and when the plaintiff has had a hearing as to correct valuation, on appeal before the board of equalization, the proper tribunal for review, it cannot be that it can come into a court of equity for an injunction, or have that decision of the board of equalization reviewed in this collateral way."

Albuquerque National Bank vs. Perea, 147 U. S. 87 (89), 37 L. Ed. 91.

“The testimony as to the board of equalization taking 80 per cent of the reported sales was explained by the members of the board. It would be going very far to assume that they were committing perjury because, to another mind, the sales seemed more significant and the explanation not very good.”

Coulter vs. L. & N. R. Co., 196 U. S. 605 (610), 49 L. Ed. 616.

“But the action does not appear to have been arbitrary except in the sense in which many honest and sensible judgments are so. They express an intuition of experience which outruns analysis and sums up many unnamed and tangled impressions—impressions which may lie beneath consciousness without losing their worth. The board was created for the purpose of using its judgment and its knowledge.”

C. B. & Q. Ry. vs. Babcock, 204 U. S. 585, 51 L. Ed. 636.

“But we may go further, and say that, the assessment of the property of this express company having been committed by law to the board of railroad commissioners, a complaint for relief in equity is insufficient which only alleges that the valuation by the board is excessive; for, in the absence of fraud, intentional wrong, or error in the method of assessment, the finding of the board cannot be overturned by evidence going only to show error of judgment in the valuation of the property. ‘The courts * * * are powerless to give relief against the erroneous judgments of assessing bodies, except as they may be specially empowered by law to do so.’ *Cooley, Taxn.* 2d Ed. 748; *Pittsburg, C. C. & St. L. R. Co. vs. Backus*, 154 U. S. 421, 38 L. Ed. 1031.”

Wells, Fargo & Company's Express vs. Craw-

ford County, 40 S. W. 710, 37 L. R. A. 371 (375).

“The taxpayer is entitled to the honest judgment of the person or persons elected or appointed in the manner directed by the General Assembly, and a tax founded on an assessment which from corrupt and malicious motives is made excessive or is rendered unequal or unfair by fraudulent practices of the officers may be enjoined, or if the property is arbitrarily assessed fraudulently at too high a valuation a court of equity will interfere. *First Nat. Bank of Urbana vs. Holmes*, 248 Ill. 362, 92 N. E. 893. But the fact of over-valuation will not, of itself, establish fraud. It is only when the valuation is so grossly out of the way as to show that the assessing body could not have been honest in its valuation that a court of equity will interfere. *State Board of Equalization vs. People*, 191 Ill. 528, 61 N. E. 339, 58 L. R. A. 513; *People vs. Bourne*, 242 Ill. 61, 89 N. E. 690.”

Sanitary Dist. of Chicago vs. Gifford, 100 N. E. 953 (955-956), 257 Ill. 424.

“The determinations of the value to be fixed on property liable to be assessed ‘is not, in the absence of fraud, subject to the supervision of the judicial department of the state. *Keokuk & H. Bridge Co. vs. People*, 185 Ill. 276, 56 N. E. 1049; *Insurance Co. vs. Pollak*, 75 Ill. 292; *Spencer vs. People*, 68 Ill. 510. So far, therefore, as relief was sought by the bill in this case for the reason that the property assessed was valued at too high a figure, the action of the court below in sustaining the demurrer was proper.”

Burton Stock Car Co. vs. Traeger, et al., 58 N. E. 418 (419), 187 Ill. 9.

“If property has been assessed higher than it should have been through a mere error of judgment on the part of the officers making the valuation, the courts are powerless to rectify the error, and can only relieve against fraud. *Keokuk & Hamilton Bridge Co. vs. People*, 145 Ill. 596, 34 N. E. 482. The fact of over-valuation will not of itself establish fraud.”

People ex rel. Thompson vs. Bourne, 89 N. E. 690 (691), 242 Ill. 61.

“It is true, as shown by the testimony, that, although the shares of the complainant were valued for taxation at but 86.7 plus per cent, of their true value in money, they were valued higher than other personal property, but the error or inequality is not shown to arise otherwise than from a mistake in judgment on the part of the assessing officials. It would, perhaps, be more exact to say that the judgment of the assessors, in their official valuation, differs from the judgment of witnesses in their unofficial valuation, as expressed in their testimony. The differences are no greater than frequently arise between witnesses in cases on trial on questions of value. And there is no certain standard by which the court can determine which is correct. Valuations, excepting of money and of standard marketable articles, are, at best, uncertain. The influences which affect salable values are various and often complicated. Much depends upon who is the owner or vendor, as well as upon who is the purchaser. The shrinkage in the value of estates result in many instances largely from the consideration that the salable value imparted by the fact of the ownership of the deceased is gone. A thousand influences, tangible and intangible, so affect the salable value of property, real and personal, in the city and in the country, as to make its true valuation a work of exceeding

difficulty, and it is not to be wondered at, nor is it a circumstance of itself warranting an appeal to a court of chancery, that there are great inequalities in valuations for taxation. To correct these the state has provided for appeals to appropriate tribunals, whose duty it is to equalize valuations and the burden of taxation. When these are exhausted all that can be done, practically, is done, excepting in cases of intentional discrimination."

Exchange National Bank vs. Miller, 19 Fed. 372.

"In the nature of the thing, market value is largely a matter of opinion. So long therefore as those charged by the law with the duty of valuation for taxation act in good faith, the court can grant no relief."

Hillmans etc. vs. County of Snohomish, 87 Wash. 58 (61).

"It is well settled that a suit to enjoin the collection of a tax will not be entertained in courts of equity—at least, in those of the United States—in which the sole ground set forth in the bill is that the tax is illegal or excessive."

Taylor vs. L. & N. R. Co., 88 Fed. 350 (357).

II.

Courts will not constitute themselves assessing officers to correct mere errors of judgment.

This principle is closely allied and associated in the reported decisions of the courts with proposition No. I hereinabove stated. Thus, in *Andrews vs. King County*, 1 Wash. 46, the court uses the following language:

"In view of the inconvenience to the public

which will arise from any derangement in the system of the collection of taxes, the law will not regard accidental omissions or minor mistakes. Nor will courts of equity interfere to correct errors in judgment as to valuation, because, as has been well said by Judge Colley, 'value is matter of opinion, and when the law has provided officers upon whom the duty is imposed to make the valuation, it is the opinion of those officers to which the interests of the parties are referred'." (Page 51.)

In *Olympia Water Works vs. Thurston County*, 14 Wash. 268, on page 274 of the written opinion, the court makes use of this expression:

"Beside, the question of valuation is a matter of opinion and cannot be reduced to a certainty by the knowledge of any one, or by any testimony that can be introduced. It must follow that valuations made by different persons would not be the same upon like property. Hence, the provisions of the constitution as to assessments being equal and uniform can best be subserved by having the valuation of all like property finally determined by the same individual or board. If an appeal from the action of the board of equalization as to particular pieces of property can be taken to the superior court, the valuation of some of the property will be finally determined by the board of equalization and of other by the superior court, and an equal valuation made less probable.

It is not doubt true, as urged by counsel for the water company, that injustice may be done as between taxpayers by the action of the board of equalization, but like injustice might follow in case the valuation was made by the superior court. The legislature had the right to provide who should finally determine the valuation

of the property of the county for the purposes of taxation, and so long as the person or board charged with that duty acts in good faith there can be no relief, though by reason of error in judgment the assessments may be unequal."

Olympia Water Works vs. Gelbach, 16 Wash. 482, was an action in which it was sought to have a court of equity enjoin the collection of taxes levied upon a valuation of property which had been increased by the board of equalization over the figures placed upon the property by the assessor, and in its opinion (page 484) the court says:

"But it seems to us that the board were entitled to rely, in a measure, upon their own knowledge and judgment as to the value of the property, and were not bound by the testimony offered, nor to keep within the values placed thereon by the witnesses. After hearing all of the testimony, it was the duty of the board to place such a value upon the property as they believed to be its just and true value, as compared with the other property in the county. While the complaint contains the general allegation that the assessed value was increased with the intent to oppress and defraud the plaintiff, and while the general rule is that, upon demurrer, the allegations of the complaint are to be taken as true, yet it is evident that they must be reasonably interpreted, and the special allegations are controlled in a measure by the whole case presented; and it appears beyond controversy that, if there was any fraud in the premises, it consisted only in placing too high a valuation upon the property, not that the plaintiff was deprived of a hearing, or that the board refused to inform itself; and the complaint also

contains the allegation that the members of the board at all times claimed and insisted that there was no intent to defraud, but that plaintiff's assessment as equalized was equal and uniform as compared with all other property in said county.

It is a well known fact that there is often a wide difference of opinion as to the values of property among persons acting honestly and endeavoring to get at the true value, and as this question must be settled somewhere, the law has reposed it in the board of equalization, and made their action final. The holding of the court in the former case that no appeal would lie, and that it was the intention of the law that the action of the board should be final, practically deprives the plaintiff of any remedy, so far as the particular act of valuing the property is concerned. It would be a useless purpose of the law to deprive parties of the right to appeal, to the end that the action of the board in such matters should be final, if the same parties have a right to institute an independent action to try the very matter which would be involved in the appeal. The allegation that the board acted fraudulently can give the case no better standing, when the only fraud alleged goes to the valuation placed by the board upon the property. It may be that there can be such action on the part of the board, fraudulent or otherwise, such as refusing to hear testimony or depriving plaintiff of notice, etc., as would warrant the interference of the courts in some manner. But there can be none where the sole question presented is whether or not the board acted under an honest belief in placing a value upon property, for this is a matter that would not be susceptible of proof. The fact that they placed a higher valuation upon the property than the witnesses placed upon it would not be

conclusive evidence, unless perchance such an excessive value is fixed that fraud must be conclusively presumed. * * *

There was room in this case for the exercise of judgment, and it cannot be said that the value placed upon the property was so entirely beyond its actual value as to conclusively show fraud, and that the board did not exercise its honest belief. There is no way of showing the state of mind of each individual member of the board when putting a valuation upon the plaintiff's property. But, even if there were, it certainly would not be a politic law that would afford a remedy in the courts in a case where the board was influenced by undue motives, and denying it in another where the board, acting honestly, should place too high a valuation upon the property."

In *Noyes vs. King County*, 18 Wash. 417 (420), the court states the principle thus:

"Upon the question of valuation the law requires the honest exercise of judgment by the assessor, and it will not scrutinize closely the various elements of value which were taken into consideration by him, unless some of them were palpably misleading and arbitrary. * * * We do not think that sufficient irregularity in the manner of listing the personal property is shown to render its assessment void, and, if not void, the valuation of the personal property made by the assessor and approved by the board of equalization is conclusive, as heretofore determined." (Citing cases.)

Again, in *Edison Elec. Ill. Co. vs. Spokane County*, 22 Wash. 168 (171), the court makes use of this language:

"The question of value is largely one of

opinion, and in cases like the present the law has confided to the taxing officers authority to determine values. It is only when the board acts maliciously or fraudulently, or without affording the property owner an opportunity to be heard, that their conclusions as to values will be disturbed."

In *Templeton vs. Pierce County*, 25 Wash. 377, *supra*, the court thus states the proposition:

"Where the assessing officer has exercised an honest judgment, and no fraud or arbitrary or capricious action in making the assessment is shown or can be presumed, the court will not interfere. Where it appears that the assessing officer endeavored honestly to get at the true value, and there is an honest difference of opinion as to the value, the judgment of the officer is conclusive. * * * As we have seen, mere excess in valuation, in the opinion of the court, does not authorize the interference of the court. *Courts cannot convert themselves into assessors for purposes of taxation, and reassess in every case where the assessor has erred in his judgment as to the value of property.*" (Italics ours.) (Pages 381, 382.)

In the subsequent case of *Carlisle vs. Chehalis County*, 32 Wash. 284, the rule in *Templeton vs. Pierce County*, *supra*, was expressly affirmed as follows:

"The evidence also satisfactorily shows that the assessor made reasonable effort to ascertain the true cash values, and that he exercised his best judgment in fixing the same. No fraudulent, arbitrary, or capricious action of the assessor is shown, and, within the rule of *Temple-*

ton vs. Pierce County, 25 Wash. 377 (65 Pac. 533), appellants are not entitled to the relief which they seek."

In *N. P. Ry Co. vs. Pierce County*, 55 Wash. 108 (111), that portion of the decision which we have quoted above also recognizes the same principle.

In *State Railroad Tax Cases*, 92 U. S. 575, 23 L. Ed. 663 (674), the Supreme Court of the United States, in an exhaustive and exceedingly careful opinion, states cogently the reason for the rule in the following apt language:

"We do not propose to lay down in these cases any absolute limitation of the powers of a court of equity in restraining the collection of illegal taxes; but we may say that, in addition to illegality, hardship or irregularity, the case must be brought within some of the recognized foundations of equitable jurisdiction, and that mere errors or excess in valuation, or hardship or injustice of the law, or any grievance which can be remedied by a suit at law, either before or after payment of taxes, will not justify a court of equity to interpose by injunction to stay collection of a tax. One of the reasons why a court should not thus interfere, as it would in any transaction between individuals, is, that it has no power to apportion the tax or to make a new assessment, or to direct another to be made by the proper officers of the State. These officers, and the manner in which they shall exercise their functions, are wholly beyond the power of the court when so acting. The levy of taxes is not a judicial function. Its exercise,

by the Constitutions of all the States, and by the theory of our English origin, is exclusively legislative. *Hine vs. Levee Comrs.*, 19 Wall. 660 (68 U. S. XXII, 226).

A court of equity is, therefore, hampered in the exercise of its jurisdiction by the necessity of enjoining the tax complained of, in whole or in part, without any power of doing complete justice by making, or causing to be made, a new assessment on any principle it may decide to be the right one. In this manner it may, by enjoining the levy, enable the complainant to escape wholly the tax for the period of time complained of, though it be obvious that he ought to pay a tax if imposed in the proper manner.

These reasons and the weight of authority by which they are supported, must always incline the court to require a clear case for equitable relief before it will sustain an injunction against the collection of a tax, which is part of the revenue of a State."

In *Sanitary Dist. of Chicago vs. Gifford*, 100 N. E. 953 257 Ill. 424, the court said:

"Mere differences of opinion between the assessing officers and the owner of the property or between the courts and the assessing officers will not give a court of equity jurisdiction to declare fraudulent even what such court thinks is an excessive valuation. *Burton Stock Car Co. vs. Traeger*, 187 Ill. 9, 58 N. E. 418." (Page 956.)

In *Burton Stock Car Co. vs. Traeger*, 187 Ill. 9, 58 N. E. 418, the court states the rule as follows:

"This provision of the constitution has been construed to mean that the valuation of prop-

erty for the purpose of taxation is to be ascertained by some person or persons elected or appointed by the legislature. The constitution expressly prohibits the ascertainment of such value by any other person than a person elected or appointed by the legislature. Hence the courts have no power to fix the valuation of property for taxation. The determination of the value to be fixed on property liable to be assessed 'is not, in the absence of fraud, subject to the supervision of the judicial department of the state.' *Keokuk & H. Bridge Co. vs. People*, 185 Ill. 276, 56 N. E. 1049; *Insurance Co. vs. Pollak*, 75 Ill. 292; *Spencer vs. People*, 68 Ill. 510." (Page 419.)

III.

The presumption in favor of regularity and legality of an assessment for taxation purposes are almost conclusive, and are not to be lightly overturned.

The presumption in favor of the regularity and legality of all of the acts of public officers, which, of course, includes the assessing and taxing officers, is concisely stated in *Meachem on Public Officers*, Section 578, as follows:

"The law constantly presumes that public officers charged with the performance of official duty have not neglected the same, but have duly performed it at the proper time and in the proper manner. In the absence of evidence to the contrary, this presumption will prevail, but it is not an indisputable one and may be overcome by countervailing evidence. Where the

rights of the public require it the presumption in favor of due performance is liberal, and the evidence to overthrow it must be clear. This presumption is in accordance with the established and familiar maxim, *Omnia presumuntur rite et solemniter esse acta donec probetur in contrarium*—everything is presumed to be rightly and duly performed until the contrary is shown. The presumption is constantly indulged in support of all kinds of official action.”

This principle was expressly recognized and adverted to in *Templeton vs. Pierce County*, 25 Wash. 377, *supra*, where, in its opinion (page 382) the Supreme Court makes use of the following language:

“The assessor and board of equalization act in a quasi judicial capacity in making or equalizing assessments. The law presumes that they have performed their duty in a proper manner. Where the rights of the public require it, the presumption in favor of due performance is liberal, and the evidence to overthrow it must be clear. *Kimball vs. School District*, 23 Wash. 520 (63 Pac. 213).”

And the principle was again expressly recognized by that court in *Vancouver Water Works Co. vs. Clarke County*, 55 Wash. 112, where, on page 115 of its decision, the court says:

“The assessor in placing valuations upon property for the purpose of assessment acts in a quasi judicial capacity, and the law presumes that he has done his duty in a proper manner and, as we said on another occasion, this pre-

sumption is liberal, and is not to be overturned except by clear and convincing evidence. *Northern Pac. R. Co. vs. Pierce County*, ante p. 108, 104 Pac. 178."

And, again, in *N. P. Ry. Co. vs. Pierce County*, 55 Wash. 108, on page 111, the Supreme Court makes use of the following language, expressly recognizing the presumption of law:

"that the assessor in placing valuations upon property acts in a quasi judicial capacity, and the law presumes that he has performed his duty in a proper manner; that this presumption is liberal, and the evidence to overthrow it must be clear."

In a dictum in an early case, *Olympia vs. Stevens*, 15 Wash. 601, the reason for the presumption is suggested by the following language of the court:

"It will not do to convict public bodies, the members of which are acting under the sanction of an oath, of improper action, without proof which can be fairly explained upon no other hypothethis than that of such improper action."

And as recently as the date of the decision in the case of *Hammond Lumber Co. vs. Cowlitz County, et al.*, 42 Wash. Dec. 237, the court so strongly indulged the presumption as to base its decision, adverse to the assessing and taxing officers of the county, excusively upon the presumption, in the absence of detailed and positive proof upon the

part of those officers as to the manner in which an assessment had actually been made.

A reason for the presumption may be found in the language of the Supreme Court of the United States in its decision in *The State Railroad Tax Cases*, 92 U. S. 575, 23 L. Ed. 663, where it says:

“As we do not know on what evidence the board acted in regard to these railroads, or whether they did not act on knowledge which they possessed themselves, and as all valuation of property is more or less matter of opinion, we see no reason why the opinion of this court, or of the circuit court, should be better or should be substituted for that of the board, whose opinion the law has declared to be the one to govern in the matter.” (Page 672.)

See also

Merc. Nat. Bk. vs. City of N. Y., 64 N. E. 756,
172 N. Y. 35.

IV.

The burden of proof is upon the objecting taxpayer to establish the irregularity or illegality of the assessment.

In *Doty Lumber & Shingle Co. vs. Lewis County*, 60 Wash. 428, on page 431, the court held as follows:

“There is a marked divergence in the opinions of the respective witnesses as to the value of the timber land, *but the law put the burden upon the appellants*, and the trial court who saw and heard the witnesses concluded that they

failed to meet the burden, and we are inclined to take the same view.” (Italics ours.)

And, speaking to the same point, the Supreme Court of the United States in *C. B. & Q. R. Co. vs. Babcock*, 204 U. S. 585, 51 L. Ed. 636, in a portion of the opinion which we have quoted above, used the following language:

“The board was created for the purpose of using its judgment and its knowledge. * * * Within its jurisdiction, except, as we have said, in the case of fraud or a clearly shown adoption of wrong principles, it is the ultimate guardian of certain rights. The State has confided those rights to its protection and has trusted to its honor and capacity, as it confides the protection of other social relations to the courts of law. Somewhere there must be an end. We are of opinion that, whatever grounds for uneasiness may be perceived, *nothing has been proved so clearly and palpably as it should be proved*, on the principle laid down in *San Diego L. & T. Co. vs. National City*, 174 U. S. 739, 754, 43 L. Ed. 1154, 1160, 19 Sup. Ct. Rep. 804, in order to warrant these appeals to the extraordinary jurisdiction of the circuit court.” (Italics ours.) (Page 640.)

And the same court, in *San Diego L. & T. Co. Co. vs. National City*, 174 U. S. 739, 43 L. Ed. 1154 (1160) made use of the following language:

“But it should also be remembered that the judiciary ought not to interfere with the collection of rates established under legislative sanction unless they are so plainly and palpably unreasonable as to make their enforcement

equivalent to the taking of property for public use without such compensation as under all the circumstances is just both to the owner and to the public; that is, judicial interference should never occur unless a case presents, *clearly and beyond all doubt*, such a flagrant attack upon the rights of property under the guise of regulations as to *compel* the court to say that the rates prescribed will *necessarily* have the effect to deny just compensation for private property taken for public use." (Italics ours.)

V.

The proof required to overturn an assessment must be clear and convincing.

Doty Lumber & Shingle Co. vs. Lewis Co.,
60 Wash. 428.

C. B. & Q. R. Co. vs. Babcock, 204 U. S. 585,
51 L. Ed. 636.

San Diego L. & T. Co. vs. National City, 174
U. S. 739, 43 L. Ed. 1154.

Carlisle vs. Chehalis County, 32 Wash. 284
(289).

"We find no substantial evidence in the record to indicate that the board of equalization acted arbitrarily or fraudulently when it increased the values as returned by the assessor. Before an assessment can be set aside upon these grounds, the evidence must be clear to that effect. *Northern Pac. R. Co. vs. Pierce County*, 55 Wash. 108, 104 Pac. 178; *Doty Lumber & Shingle Co. vs. Lewis County*, 60 Wash. 428, 111 Pac. 562, Ann. Cas. 1912 B. 870." *Blumauer vs. Mann*, 72 Wash. 429 (430).

"After reading carefully the appellant's abstract of the evidence, and the respondent's

supplemental abstract, and a large part of the testimony as it appears in the statement of facts, we are of the opinion that the conclusion of the board of equalization, and the judgment of the trial court, are not overcome by the testimony in the record. The board of equalization acts in a quasi judicial capacity in making or equalizing assessments, and the evidence to overthrow its conclusions must be clear. *Templeton vs. Pierce Co.*, 25 Wash. 377, 65 Pac. 553." *National Lumber & Manufacturing Co. vs. Chehalis County, et al.*, 44 Wash. Dec. 347 (351).

"Proof of fraud or discrimination must be clear and convincing to warrant interference by courts of equity in matters of taxation. 5 *Pomeroy's Eq. Jur.*, Section 360." *Sanitary Dist. of Chicago vs. Gifford*, 100 N. E. 953 (955), 257 Ill. 424.

VI.

Upon an alleged inequality of assessment the test must be a comparison between the property assessed and like property of similar character, similarly situated, and of similar value by reason of similar use.

The proper test has been established by numerous decisions of the courts of Washington and other states. Thus, in *Templeton vs. Pierce County*, 25 Wash. 377, *supra*, the court says:

"If property, even if over-valued, is assessed in the same proportion as other like property within the jurisdiction of the assessing officer, and the system of valuation adopted

operates equally on all other property, the constitutional provision as to uniformity of taxation is complied with." (Page 382.)

In an early decision in this state, *Lockwood vs. Roys*, 11 Wash. 697, the court, advertng to topographical similarity, or rather topographical differences, as affecting the value of property, has this to say:

"Town lots, especially in this country, are as much articles of merchandise as any species of property, which can be mentioned, and they do not necessarily bear any relation to each other in value. Lots on one side of a block may be very valuable and very desirable on account of their topographical situation, while those on the other side of the block, or even immediately alongside, might be comparatively worthless for the same reason." (Page 700.)

In *Vancouver Waterworks vs. Clarke County*, 55 Wash. 112, the plaintiff sought to show an inequality in assessment by making a comparison between two tracts of land containing respectively 9.27 acres and 11 acres, upon which were located the springs which furnished the supply of water that the plaintiff, a waterworks company, distributed to its customers, each of which tracts was assessed at five thousand dollars (approximately five hundred dollars per acre), and other lands in the vicinity of its own tracts which were assessed at from fourteen to

thirty-two dollars per acre, two or three of which contained springs of a capacity equal to those belonging to the plaintiff, and so situated that they could be similarly used, and, speaking of this attempted comparison, the Supreme Court says:

“It is no evidence of over-assessment to show that land in the vicinity of appellant’s land is assessed for a less amount than is the appellant’s land, without showing that they are alike in character, and are in demand for the uses to which the appellant’s land is devoted. For this reason land valuable for ordinary farming purposes cannot be justly compared for assessment purposes with land containing springs which are used to supply a city with water. It is, therefore, no evidence at all that appellants’ lands are over-valued to show that farming lands surrounding it are assessed at a much less valuation. The appellants’ lands do not derive their value from their use for farming purposes; neither are they being so used. Nor is it evidence that they are over-assessed to compare the amount at which they are valued with the assessment put by the assessor upon lands containing springs, without showing that the springs are in demand for a use like or similar to that for which appellants’ springs are used; but of this there was no evidence at all. The witness merely said that the springs could be used for furnishing water to Vancouver; not that there was any demand for their use for that purpose, or for any other that made them of value. This, we think, too remote to afford a basis of comparison.” (Pages 114, 115.)

Similarly, in *N. P. R. Co. vs. Pierce County*, 55 Wash. 108, the court stated the contention of the

parties and its own conclusions in the following language:

“The appellant, however, sought to prove its case by showing that the property was grossly over-valued as compared with its real value and the assessed value of like property of another owner in the same situation. To that end it showed that the property of the Puget Sound Flouring Mill Company, which owned 1.8 acres in the north part of block 71, was assessed at \$32,400, or at the rate of \$18,000 per acre, while its own part of the block, consisting of 2.24 acres, was assessed at \$56,300, or at the rate of \$25,133 per acre. It showed furthermore, that its holdings in these several blocks, outside of its right of way, had been assessed at amounts ranging from \$25,133 per acre in block 71, to something over -39,000 per acre in block 67, whereas its tax commissioner testified that a fair average value of the entire tract was -10,000 per acre. It appeared also that the assessor purported to assess the land at only sixty per cent of its actual value.

On the other hand, the county put in evidence testimony to show that the blocks were chiefly valuable because of their situation, covering as they do the principal water frontage of the city of Tacoma, and being desirable for docks, wharves, and warehouse sites. It also put upon the stand four witnesses who qualified themselves to testify as to the value of the particular tracts. One, a Mr. Hellar, placed a valuation on the property substantially in accord with that appearing on the assessment rolls; another, a Mr. Miller, valued the property at from \$50,000 to \$80,000 per acre; and the two others, a Mr. Mettler and a Mr. Railsback, placed a valuation thereon of from \$75,000 to \$100,000 per acre. * * *

Tested by these principles, there would seem

to be no cause for interference with the assessment complained of here. There is no direct evidence of fraud, capriciousness, or want of an exercise of an honest judgment on the part of the assessor, and the presumption of fraud that might arise from the fact that the railroad's property is assessed at higher valuation than the similar tract owned by the Puget Sound Flouring Mills Company is not conclusive of over-valuation, in the light of the evidence as to values given by the witnesses." (Pages 110, 111, 112.)

In *Collins vs. King County*, 80 Wash. 251, the complainant sought to make a comparison between his property located upon Second Avenue South, south of Yesler Way, in the City of Seattle, with other property fronting on Second Avenue between Pike Street and Yesler Way, north of Yesler Way. The lower court sustained the demurrer to the complaint, and upon affirming the decision of the lower court, the Supreme Court said:

"The complaint does not show that the assessment is not uniform or proportionate to the assessment of *adjacent* property, nor that, as compared with such property, the assessor has capriciously or arbitrarily determined the real and assessed value of appellants property. * * * It is not a sufficient showing of arbitrariness or fraud to compare appellants property below Yesler Way with the properties between Pike Street and Yesler Way, as to their rental values or the relation between their rental income and assessed valuation. Many proper considerations might determine the rental value of property on Second Avenue between Yesler Way and

Pike Street that do not enter into the rental value of property on Second Avenue South, and the showing of such values of such properties is not a showing of actual or constructive fraud." * * * (*Italics ours.*)

The complaint makes no attempt to compare the assessment of appellant with the assessment of other *like property similarly situated*, but makes its only comparison between the rental and assessed value of appellants property on Second Avenue South and the rental and assessed value of property on Second Avenue between Pike Street and Cesler Way, which is not like property similarly situated." (*Italics ours.*) (Pages 252, 253, 254.)

And in *Dickson vs. Kittitas County*, 42 Wash. 429, the test was properly applied and the assessment of the complaining tax payer reduced.

In *Sanitary District of Chicago vs. Gifford*, 100 N. E. 953, 257 Ill. 424, *supra*, the tax payer, the owner of lands occupied by a power plant and equipment, sought to make a comparison between its lands so occupied and adjoining lands valuable principally for farming purposes, and, stating the contentions of the tax payer and its decision thereon, the court makes use of the following language:

"Counsel for appellant argue that the value of its real estate found by the board of review, as compared with other real estate in the neighborhood, is so excessive as to be fraudulent. If the lands of appellant not occupied by the power plant or main drainage channel or its equipment, and only available for farming, were

separately assessed at the values alleged in the bill, such values, as compared with the assessed values of other land in the vicinity, as alleged in the bill, considered only for farming purposes, would doubtless be grossly excessive. But there is nothing alleged in the bill to show that the land of appellant available for farming purposes was so separately valued and assessed. On the contrary, we conclude from the allegations of the bill that the power plant, with its equipment, and all other works of the sanitary district, were assessed together with all the other property of said sanitary district in the said township. This being so, the farm land value would furnish no basis for a fair comparison of the land value. If appellant desired to have its land which it alleges to be farm land assessed separately from the rest of its property, it would have furnished a description of such land to the proper officials before the assessment was made." (Page 955.)

VII.

(a) The assessment of the property of others at a lower proportion of its value than that of a complaining tax payer, which is not assessed at more than its cash value, as required by law, does not make the tax invalid as to the complaining tax payer unless the assessment was fraudulently made.

"The assessment of the property of others at a lower proportion of its value than that of a complaining tax payer, which is not assessed at more than its fair cash value as required by law, does not make the tax invalid unless the assessment was fraudulently made." *Doty*

Lumber & Shingle Co. vs. Lewis County, 60 Wash. 428 (page 431).

“Tested by these principles, there would seem to be no cause for interference with the assessment complained of here. There is no direct evidence of fraud, capriciousness, or want of an exercise of an honest judgment on the part of the assessor, and the presumption of fraud that might arise from the fact that the railroad’s property is assessed at higher valuation than the similar tract owned by the Puget Sound Flouring Mills Company is not conclusive of over-valuation, in the light of the evidence as to values given by the witnesses.” *N. P. R. Co. vs. Pierce County*, 55 Wash. 108. (Pages 11, 112.)

This evidence would rather indicate that the property of the Flouring Mill Company was under-assessed than that the railroad’s property was over-assessed.” *Ibid.*

Northern Pacific Railway Co. vs. The State of Washington, 42 Wash. Dec. 271, was an action in which the Railway Company claimed an unjust and illegal discrimination against it by reason of the difference in the manner in which the assessment of its property was made by the state board of tax commissioners, and the assessment upon other kinds of property of other persons in the state was made by various county assessors in the state, and because of the manner in which both assessments were equalized by the state board of equalization. The contentions of the railway company can only be ascertained by reading the whole decision, and regarding

the alleged discrimination, the Supreme Court says:

“Our foregoing discussion, we think, leaves little to be said upon this contention, since we have determined that other property within the state was not assessed upon a more favorable basis than was appellant’s operating property for the year 1913, in view of the nature of such property as an organized entity. So far as the measure of value of appellant’s operating property as compared with the measure of value of other property within the state adopted for taxation purposes is concerned, we rest our conclusions that there has been no violation of the rule of uniformity prescribed by article 7, of our constitution, upon the grounds already noticed. Upon the same grounds we rest our conclusion that no right guaranteed by the fourteenth amendment to the Federal constitution has been violated. * * *

We are of the opinion that the mere fact that the assessing of appellant’s operating property as a unit by the state board of tax commissioners as prescribed by the law relating to assessment of railway operating property, instead of by the county assessors as other property is to be assessed under the general revenue laws, is not violative of this provision of the constitution; so long as such property is charged by the same rate of levy and its assessed value measured by the same standard as other property within the state. There is no question here involved as to the rate of levy; and we think we have already demonstrated that the measure of value applied to appellant’s operating property is the same as that applied to other property within the state for the purpose of taxation. * * *

It is not claimed that, in the assessing and equalization of the value of appellant’s operat-

ing property, there was any discrimination made by the taxing officers as between it and other railway corporations. Even should we view the allegations of the complaint as having some reference to property and the intangible value thereof other than the mere good will of private business concerns, it is apparent that the allegations of the complaint do not even, as so viewed, point with any degree of certainty to any material quantity of such property which had been assessed by the use of a different standard of value than that employed in assessing appellant's operating property; which, in any event, would render the complaint insufficient so far as this branch of the controversy is concerned." *First Nat. Bank of Aberdeen vs. Chehalis County*, 6 Wash. 64, 32 Pac. 1051; *Puget Sound Nat. Bank of Seattle vs. Seattle*, 9 Wash. 608, 38 Pac. 219. (Pages 292, 293, 194.)

In the very interesting and instructive case of *Keokuk & H. Bridge Co. vs. People*, 161 Ill. 514, 44 N.). 206, the court held as follows:

"Even if its property was assessed more in proportion to its value than other property in the township was assessed, and more than it should have been, yet it is plain there was no authority in the county court, upon the application for judgment, to either grant relief or refuse judgment, unless it was made apparent that there was fraud in the making of the assessment. Fraud is never presumed, but must be established by sufficient evidence; and especially could no presumption of fraud be indulged when the action of the assessor has been been challenged before each of the two boards of review that the law had provided for revising his assessments, and has met with their appro-

bation. And the mere fact of over-valuation does not of itself, establish fraud. *Trust C. vs. Weber*, 96 Ill. 346; *Keokuk & H. Bridge Co. vs. People*, 145 Ill. 596, 34 N. E. 482; *Spring Valley Coal Co. vs. People*, 157 Ill. 543, 41 N. E. 874.

* * * *

In the case before us, Cole, the superintendent of appellant, testifies that the bridge cost over \$500,000, but that it could now be built for about \$252,400. Of course, this latter is but the expression of the opinion of the witness, and an interested one at that. The assessor and the boards that reviewed the assessment may well and honestly have been of the opinion that the existing bridge is of a larger value than the sum last mentioned. And, as we understand the evidence, the bridge, with its approaches, is 3,092 feet in length, and of this 1,663 $\frac{1}{4}$ feet is in Illinois, and 1,428 $\frac{3}{4}$ feet in Iowa; but the east approach is 700 feet long, and the west approach only 200 feet long, and of the bridge proper 265 $\frac{1}{2}$ more feet are located in Iowa than in Illinois. It further appears that the bridge is used both for railroad purposes—the Wabash trains and the Toledo, Peoria & Western trains passing over it—and for horses, wagons and other vehicles and foot passengers. The fair cash value of the bridge is not necessarily restricted to what would be the present cost of the material and labor that would be actually used in its construction if it were now being built. The bridge, as a bridge, as a complete structure, as a property already in actual existence and in actual and profitable use, has a value other than the total of the values of the earthwork, masonry, iron, timber, lumber, and labor required in its construction. It is a property *sui generis*, has no market value, and is not affected by the principles of supply and demand; and evidence of what it did in fact cost

to construct it, or opinions of what it would now cost to construct it, do not conclusively establish its real and actual value. *Bureau Co. vs. Chicago, B. & Q. R. Co.*, 44 Ill. 229. It is property, the value of which is largely determined by its location, its surroundings, and the use that can be and is made of it. In our opinion, the evidence in this record does not establish that the part of the bridge that is in this state was assessed at more than its fair cash value. Indeed, we are strongly inclined to think that it was not assessed at more than one-half of its fair cash value. The evidence, however, shows that other property in the township was assessed at about one-third of its fair cash value. The law requires all taxable property to be assessed at its fair cash value. The assessment of the property of others at less than its fair cash value, while it may cause the taxpayer, whose property is assessed at its fair cash value, to bear an undue proportion of the public burden, will not, in the absence of fraud, affect the validity of the tax. *Spencer vs. People*, 68 Ill., 510; *People vs. Lots in Ashley*, 122 Ill. 297, 13 N. E. 556. We are inclined to the conclusion that, while the assessor did not assess the property of appellant at more than, or even as much as, its fair cash value, yet that he assessed it more in proportion to its value than he assessed other property in the township; but we find no evidence that satisfactorily establishes fraud, and justifies the conclusion that he did this from a wrong motive, instead of an error of judgment, or that the boards of review acted from improper and fraudulent motives." (Pages 207, 208.)

"Henry, J. This suit was brought to enjoin the collection of state and county taxes on shares of national bank stock, on the ground that the assessment of the taxes was in viola-

tion of the constitution of this state, as well as of the act of congress forbidding a higher rate of taxation of national bank stock than of other moneyed capital. It appears from the evidence, and the findings of fact by the court, that plaintiffs are the holders of the capital stock of the First National Bank of Brenham, which consists of \$100,000, divided into shares of \$100 each. The shares had an intrinsic as well as market value above \$100 each. The bank owned real estate, which was assessed for taxes at the value of \$15,000. The shareholders insisted upon their right to have the shares assessed at \$60 each. They were assessed at their par value, less the value of the real estate, or at \$85 each. The plaintiffs introduced in evidence the assessments of a few parties, among them of one private banking firm, and proved that the property in each case was assessed at about one-half of its true value. They contend that it was the custom of the assessor and the board of equalization of Washington county to list or assess property at a uniform valuation of about 50 per cent. of its true value. The court found that no such custom existed. This finding is assigned as error.

The evidence referred to was all that was offered of the existence of such a custom. The court correctly concluded that it was not established. Even if it had been established, it could not have properly affected the result of this suit. It appears that the appellants' property was not assessed beyond its true value." *Engelke vs. Schlender*, 75 Tex. 559, 12 S. W. 999 (page 1000).

See also

Albuquerque Nat. Bank vs. Perea, 147 U. S. 87, 37 L. Ed. 91, *supra*.

In *Mercantile Nat. Bank vs. New York*, 127 N. Y. 35, 64 N. E. 756, the court held as follows:

“The inequality which is complained of is one that is incidental to a general plan of taxation. That is to say, there is no complaint of inequality in the assessment of the taxable personal estate. It is that the taxable real estate is assessed at a different ratio of valuation from that adopted as to personal estate. I do not think that this is an inequality which can constitute a legal grievance; as would be the case if there had been an unequal valuation of the property of the same class. Underlying the governmental power of taxation for the raising of revenues is the principle, implied from the nature of our political institutions, that taxation should be equal, in the sense that there shall be no discrimination against persons, nor any classification which results in discrimination and that the common burden shall be sustained by common contributions, regulated by some fixed general rule, which operate impartially. Is this a case where that principle has been violated? I think not. A general statutory rule has been disregarded by the assessors in the exercise, presumably, of an honest and reasonable judgment, as nothing is charged to the contrary; but their action was impartial, and with reference to the whole community. What discrimination was exercised was solely as to the basis of valuation for each of the two classes of property into which all of the property of the community was divided. * * *

Equality is unattainable, and can never be but approximate.

Upon what principle will a court of equity interfere in a case where the grievance relates to the determination of a political body, acting

judicially within the sphere of its jurisdiction? Public policy is against the interference by injunction to restrain the collection of a tax, to the delay and detriment of the public business (*Railroad Co. vs. Nolan*, 48 N. Y. 513); and courts should be reluctant to grant such preventive relief when they are unable to do complete justice by causing a new assessment upon just principles. A court of equity does not sit to enforce the laws of the state, nor will it sit in review of the judgment of a political body, whose judgment, in the assessment of property for taxation, has been honestly exercised. Nor will the collection of a tax be restrained which is merely erroneous, and not void. See *Mooers vs. Smedley*, 6 Johns. * * *

How is the court to say that there has not been an equitable adjustment of the burden of taxation under the rule adopted by the board of commissioners? When assessments for the purposes of taxation are made upon principles applicable alike to all the members of a community, there is substantial equality. If equality is equity, there is no inequity in a general scheme of assessment for taxation which applies to the whole community, and discrimination against no species of property. How the plaintiff's stockholders, in behalf of whom this suit is brought, are affected individually by the application of the rule of valuation adopted, we are not informed. They may have had the assessed valuations of their personal estate reduced by the deduction of their indebtedness. The plaintiff's bank is treated like all other moneyed corporations, and its stockholders have the same privileges as are possessed by other holders of personal property. Laws 1882, c. 409, Sec. 312. The inequality of which complaint is made is one that is general in its nature. If

the plaintiff's attack were allowed to prevail, the whole assessment roll might be invalidated, and serious embarrassment might be caused to governmental operations. I do not think that the exercise of the equitable power of the court can be invoked to accomplish the subversion of a general scheme of assessment and taxation, which has been adopted by the department of government constituted for the purpose. The cases in the United States Supreme Court to which our attention has been directed as justifying the intervention of equity do not conflict with these views. They differ in essential facts. Either they relate to the statutory conditions which resulted in an injurious discrimination against a class of persons or a species of property, or to acts of assessors having a clear purpose to discriminate against shares of bank stock. * * *

Equity will go far to afford relief in cases of mistakes, or for the prevention of fraud, or to secure to the citizen the equal protection of the laws; but it is not its province to interfere with the collection of a tax in a case where the grievance assigned does not relate to some question of fraud, or of illegal discrimination, or classification" (pages 760, 761).

See also:

C. B. & Q. R. Co. vs. Babcock, 204 U. S. 589,
51 L. Ed. 636 (640).

Coulter vs. L. & N. Ry. Co., 196 U. S. 599, 29
L. Ed. 615 (618).

Fargo vs. Hart, 193 U. S. 490, 48 L. Ed. 761.

Cummings vs. National Bank, 101 U. S. 153,
25 L. Ed. 903.

In *Carroll vs. Alsop*, 64 S. W. 193, the court dis-

cussed the matter of the particular inequality complained of as follows:

“Complainant’s property, according to his bill, is assessed at 90 per cent of its actual value, and another class of property is assessed at 75, another at 60, and another at 40. The average is said to be 60. Now, to what percentage shall complainant be reduced? He has as much right to a 40 per cent valuation as to one at 60 and 75 per cent, and so has every other property owner in Shelby county. Again, it is evident that, if complainant could obtain relief under his present bill, it would still leave his property liable to be back-assessed under our statute for three years. Indeed, upon the concession made in the complaint that it is not assessed at its actual cash value, it would become at once the duty of the comptroller to cause it to be back-assessed at its actual value, so that under our system there is but one basis upon which values can be made finally to rest, and that is the actual cash value, and until that is reached no property is free from the machinery of the law designed to place it on that basis. It is well to note also that complainant in this case only compares his property with other property around him, and not with other property in other localities of the state. We have therefore in the present case a property owner who confesses that his property is assessed at less than its actual value, complaining because, in his opinion, his neighbors’ property is assessed at a still lower valuation. It is no ground for relief to him; nor can any taxpayer be heard to complain of his assessments, when it is below the actual cash value of the property, on the

ground that his neighbors' property is assessed at a less percentage of its true or actual value than his own. When he comes into court asking relief of his own assessment, he must be able to allege and shown that his property is assessed at more than its actual cash value. He may come before an equalizing board, or perhaps before the courts, and show that his neighbors' property is assessed at less than its actual value, and ask to have it raised to his own, if his is at the cash value; and in this way the courts, legislature, and taxpayers will co-operate to tax all property at its actual cash value, and to make all taxes equal and uniform, as the constitution contemplates. The actual cash value is the only practicable basis upon which taxes can be made equal and uniform, and this is clearly the constitutional provision, the legislative intent, and should be the effort of the court, as well as taxpayers. While valuations may in this way be increased, it will result in no hardship, as the rate of taxation may be proportionally lowered, and yet produce the same revenue; and when this rule is applied to all property of every class and character, whether corporate or individual, there will be no hardship, and the soundest public policy will be subserved, and the only rational and feasible basis for assessments will be reached." (Pages 201, 202.)

In an early case, *Eureka District Gold Min. Co. vs. Ferry County*, 28 Wash. 250, the Supreme Court recognized and applied the rule here contended for.

(b) A federal court will not enjoin the collection of state taxes on certain property because of the under-valuation of the other taxable property in

the state where such inequality is not the result of scheme or agreement among the taxing officers.

C. B. & Q. Co. vs. Babcock, 204 U. S. 585, 51 L. Ed. 636.

Exchange Nat. Bank vs. Miller, 19 Fed. 372 (374-5-6).

THE DUTIES OF THE BOARD OF EQUALIZATION.

On pages 78, 79 and 80 of their brief, the appellants quote to the court what purports to be Sec. 9200 of Remington & Ballinger's Code. The section as quoted, however, is not the law which governed the duties of the Board of Equalization at the time the assessments for 1913 and 1914 were equalized by the Board of Equalization of Clallam County. The section quoted in appellants' brief contains an amendment which was not a part of the law until the enactment of Chapter 122, Laws of 1915; and that amendment added to the original Sec. 9200, near the end of the first paragraph of the section, the following clause: "According to the measure of value used by the county assessor in such assessment year."

Either by accident or design, the appellants have quoted to the court, on pages 78, 79, 80 and 81 of their brief, a statute which varies in many particulars from the law in existence at the time the assess-

ments of 1913 and 1914 were equalized by the Board of Equalization of Clallam County. The law which prescribed the duties and regulated the functions of the Board of Equalization of 1913 and 1914 is as follows:

“The county commissioners, the county assessor and the county treasurer, or a majority of them, shall form a board of equalization of the assessment of the property of the county. They shall meet for this purpose annually, on the first Monday in August, at the office of the auditor, who shall act as clerk of said board, and, having each taken an oath fairly and impartially to perform their duties as members of such board, they shall examine and compare the returns of the assessment of the property of the county, and proceed to equalize the same so that each tract or lot of real property and each article or class of personal property shall be entered on the assessment list at its true and fair value, subject to the following rules:

First. They shall raise the valuation of each tract or lot of real property which in their opinion is returned below its true and fair value to such price or sum as they believe to be the true and fair value thereof, after at least five days' notice shall have been given in writing to the owner or agent.

Second. They shall reduce the valuation of each tract or lot which in their opinion is returned above its true and fair value to such price or sum as they believe to be the true and fair value thereof.

Third. They shall raise the valuation of each class of personal property which in their opinion is returned below its true and fair value thereof, and they shall raise the aggregate value of the personal property of each individual

whenever they believe that such aggregate value is less than the true valuation of the taxable personal property possessed by such individual to such sum or amount as they believe to be the true value thereof, after at least five days' notice shall have been given in writing to the owner or agent thereof.

Fourth. They shall, upon complaint in writing of any party aggrieved, being a non-resident of the county in which his property is assessed, reduce the valuation of each class of personal property enumerated in Section 9128 aforesaid, which in their opinion is returned above its true and fair value, to such price or sum as they believe to be the true and fair value thereof; and, upon like complaint, they shall reduce the aggregate valuation of the personal property of such individuals who, in their opinion, have been assessed at too large a sum, to such sum or amount as they believe was the true and fair value of his personal property.

The county auditor shall keep an accurate journal or record of the proceedings and orders of said board in a book kept for that purpose, showing the facts and evidence upon which their action is based, and the said record shall be published the same as other proceedings of county commissioners, and a copy of such published proceedings shall be transmitted to the auditor of the state, with the abstract of assessment hereinafter required.

The county board of equalization may continue in session and adjourn from time to time during three weeks, and shall remain in session not less than three days, commencing on the said first Monday in August, but after final adjournment of the board of equalization the county commissioners shall not have the power to change the assessed valuation of the property of any person, or to reduce the aggregate

amount of the assessed valuation of the taxable property of the county, but may correct errors in description or double assessments: Provided, that no taxes, except special taxes, shall be extended upon the payrolls until the property valuations are equalized by the state board of equalization for the purpose of raising the state revenue.”

(Rem. & Bal. Code, Vol. 2, Sec. 9200, Ed. 1910.)

Pages 142, 143 and 144, and pages 165, 166, 167 and 168 of appellants' brief are devoted to an assault upon the Boards of Equalization of Clallam County for the years 1913 and 1914. It is apparently the contention of the appellants that the Board of Equalization, under the laws of Washington, as it existed in 1913 and 1914, constituted a sort of supervisory assessors' board, whose duty it was to check item by item every feature of the assessment submitted to the board by the assessor on the first of August. As a matter of fact, the duties of the Board of Equalization are indicated by the very title which is given the body, namely, the *equalization* of assessments, not the making of an original assessment, nor the establishing of a ratio of assessment, nor the supervision of the work of the assessor, except as that work may come before the board sitting as a court to hear complaints. By the very terms of the law establishing the board (Rem. & Bal. Code, Vol. 2, Sec. 9200) its sessions are limited to not more than three weeks and not less than

three days, and after its final adjournment it is *functus officio*.

Mute evidence negating the charges of fraud is furnished in the record, so far as the Board of Equalization is concerned, by proof of the way in which it acted upon complaints of assessments made before it. The manner in which this board did its work is established in the record in many places.

G. M. LAURIDSON, a witness called on behalf of the plaintiffs, being sworn, testified substantially as follows:

He has been a resident of Port Angeles for 23 years continuously. He has an interest in a timber claim down in the Solduc Valley.

Q. And you had a conversation with Mr. Hansen, one of the County Commissioners, with reference to taxing that land, did you not?

* * * * *

A. Probably Mr. Hansen spoke for the Board, being Chairman of the Board, and he said I was assessed like everybody else in there; that they could not make fish of one and flesh of another.

Q. Didn't Mr. Hansen tell you that he could not lower the valuation of your timber because it would make a precedent, and that they would put it in to the timber people?

A. No, he said, "If we reduce your assessment it will look as if we were trying to favor you."

Q. As against what?

A. Against the other timber men up there.

The timber claim that he referred to was assessed for 1914 at \$5270. Witness being shown a paper writing signed by him admits that on July 23, 1914, he gave an option on one-half interest in the property for \$1500, and that was the price he was willing to sell for.

(Record, pages 192-193-194.)

Testimony of the defendants' witness Babcock.

Q. You were on the board, I think you said, in 1913, as well as 1914?

A. Yes, sir.

Q. On the Board of Equalization?

A. Yes, sir.

Q. What did you assess the property at, what date did you assess the Port Angeles property at in the rolls of 1912?

A. We did not assess the Port Angeles property at all.

Q. What did you equalize it at?

A. We did not have any tax rate.

Q. What did you pretend to equalize it at?

A. To have all the property as near alike, I suppose, regardless of percentage.

Q. What value did you place upon the properties for the purposes of equalization, fifty per cent of its value, or one hundred per cent of its value?

A. We did not have any occasion to place any valuation.

Q. You did not gauge with reference to its actual value or fifty per cent of its value?

A. Only in comparison.

Q. Comparison with what?

A. Other property.

Q. Just other property?

A. Yes, sir.

* * * * *

Mr. FROST: We object to this question for the reason that the Statutes of the State of Washington expressly provide that the County Board of Equalization shall have no power to either raise or lower the aggregate assessed value of property within the county and limits them to the sole duty of equalizing the property as between individual property owners.

THE COURT: He may answer the question. Objection overruled.

MR. FROST: Note an exception.

THE COURT: Exception allowed.

A. That is what I said.

Q. (The Court) That is what you mean to say on what Mr. Frost said?

A. Words to that effect.

Q. Read the question. (Question read.)

MR. PETERS: I think the answer to my question previous to that would be an answer to this question.

Q. Will you answer this question?

A. Yes, sir.

Q. Answer it then.

A. We did not.

Q. You did not what?

A. I simply say "no."

Q. That doesn't answer the question. Did you consider the property as assessed on the roll of 1912 when it was before you for equalization as on the basis of fifty per cent of its actual or market value, or as assessed at one hundred per cent of its market or actual value?

A. Neither one.

- Q. Neither one?
 A. No, sir.
 Q. You paid no attention to that standard?
 A. No, sir.
 Q. Is that true of the equalization of the rolls of 1914?
 A. I think so.
 Q. The same thing?
 A. I think that held good during all of my official connection with the Board of Equalization.

(Record, pages 466, 467, 468).

* * * * *

- Q. I am asking you whether it was your understanding at the time the rolls were before you as one of the Board to equalize that the assessment has been made on the basis of one hundred per cent of the value of the property or made on the basis of fifty per cent or any other per cent of its value?

MR. EWING: The Board of Equalization does not fix the rate. They equalize, is all.

THE COURT: He is asking what his understanding is of what rate was assessed.

WITNESS: I can answer that.

- Q. (Mr. Peters) Answer it.
 A. No, I did not.
 Q. You did not know?
 A. No, sir; that question never came up before the Board of Equalization.

(Record, pages 471, 472).

* * * * *

- Q. You just then adopted the assessment roll?
 A. We compared property.
 Q. With what?
 A. With other property.
 Q. What property did you compare?

- A. We went over the assessment roll personal and real.
- Q. You went over the assessment roll personal and real?
- A. Yes, sir.
- Q. When you went over the assessment roll what did you do, just take any piece of property and tell what you did about that?
- A. I don't remember.
- Q. Suppose you take lot 13 in block 19—I don't know—only consists of Smith's Addition—and you found it in the book assessed at a certain value, what did you do about it?
- A. We looked to see how surrounding property was assessed; if it was assessed at an equal value in our opinion we left it alone.
- Q. If that particular lot 13, block 19, had been assessed at fifty thousand dollars, or had been assessed at five thousand dollars, so long as the next block to it, or the block in its neighborhood was assessed at the same proportionate value, you paid no attention to it?
- A. If, in our opinion, the surroundings, and my knowledge—I have lived in the town a good many years and know something personally about the values of land and lots and property, and I used that to base my judgment on.
- Q. Then you did base your judgment in equalizing that roll on the actual value of land proportionate to the assessment?
- A. Compared to other property.
- Q. To other lands?
- A. Yes, sir, to other lands.
- Q. Did you make any comparison between the value put upon it by the assessor and in your judgment the actual value of it?
- A. No, sir.
- Q. You did not?

- A. No; only as it was compared with other lots and other similar property.

The Board of Equalization made no substantial changes in the roll as handed in by the assessor, or the roll of 1914. They made no changes respecting the timber lands of the plaintiff in either roll.

- Q. Now you stated, Mr. Babcock, that you always had maintained that timber property in an isolated tract in small area timber property ought not to be assessed as high as it was the custom of the assessor of Clallam County to put it.

- A. I do not think I made that statement.

- Q. Then what statement substantially did you make along that line?

- A. That it should not be assessed as high as larger bodies of timber lands; timber sufficient to constitute a logging proposition.

- Q. So that if a man had one hundred and sixty acres in your judgment it ought to be assessed as high proportionately as one who had sixteen hundred acres, is that it?

- A. Practically so, yes, sir.

- Q. For what reason?

- A. For the reason I have stated, that one cannot be logged without the other, that the large tract of timber can be made a profitable logging proposition, and a man that had one hundred and sixty acres down in the west end of this county and that one is unable to do anything with his timber, to market it or sell it or do anything with it at all. He is tied up and hemmed in by speculators and large timber owners, and he cannot get out and some of them with an acre or two of land cleared trying to make a living cannot raise a sufficient amount of produce on one of these little clearings to pay his taxes, when it is as-

sessed at the same value of the large timber owners.

Q. Suppose one of the large timber owners stationed some fellow to make a living on that land who had one hundred and sixty acres down there where these plaintiffs have their land instead of forty-one thousand acres that they have, what would you say should be the rate of taxation on that timber land as compared with the taxation on the forty-one thousand acres?

A. I think it would be entitled to the same consideration.

Q. What consideration?

A. That it should be lower.

Q. What rate, for instance?

MR. EWING: That is objected to, the proof already in shows that there was no discrimination.

THE COURT: The objection is sustained. It is not a matter of rate, it is a matter of valuation. The record shows that the valuation was uniform on both the large and small holdings.

(Record, pages 474, 475, 476, 477.)

Testimony of the defendants' witness FRANK LOTZGESELL:

Q. Take zone No. 2, in which plaintiffs' timber is located; an application was made, was it not, for the reduction of this rate?

A. For the rate on that particular zone?

Q. The rate on the plaintiffs' timber, wherever it might be located?

A. I believe there was.

Q. And in 1914 you raised the rate in this zone, did you not, from seventy cents on fir to eighty cents?

A. No, sir.

Q. In 1914?

A. No, sir.

MR. FROST: He is not the assessor.

Q. (Mr. Earle) I should have said that raise was made and you passed upon the plaintiff's protest and request for a reduction, did you not?

A. Yes, sir.

(Record, page 537).

* * * * *

On re-direct examination witness says all classes of property in Clallam County were raised in 1914 over 1912. The raises were general throughout the whole country.

Q. What are the facts with reference to all protestants who appeared before the Board in either 1912 or 1914 being given a full, free and fair hearing?

A. They all had a fair hearing and free.

Q. Was anybody denied a hearing, or shut out?

A. No, sir.

Q. What official records had the Board of Equalization before them while sitting as a Board of Equalization?

A. They had the assessor's records.

Q. Of what did those records comprise?

A. The assessments of the county.

Q. And what else?

A. All the property in the county, I suppose.

Q. They had the cruise books, didn't they?

A. Yes, sir, they had the cruise books.

Q. Both the timber cruises, and the land cruises?

A. In 1914, most all the land cruises was there, I think, but not in 1912.

(Record, pages 540, 541).

* * * * *

. Witness further states that the assessor raised the assessment in 1914, but the assessor never explained to witness as a member of the Board of Equalization in 1914, why the assessment was raised. The Board did not ask for any explanation. The Board did not consider the reason for the raise. Witness does not think that the only reason for raising the assessment in 1914 was that the levy might be reduced. Witness always contended that it made no difference what property was assessed so long as it was equal among the county.

Q. So long as you were on the Board of Equalization you never took into consideration whether the assessment made by the assessor was higher than it ought to be compared with the fair market value of the property assessed, or was lower than it ought to be?

A. As long as it was equal.

* * * * *

Q. As long as all the farm property was assessed on the same proportionate basis you never considered whether farm property as a class was assessed higher than it ought to be or not?

A. As long as the farm property was at the same rate as the timber or the town property we thought it made no difference; at least, I thought it would make no difference.

(Record, pages 542, 543).

* * * * *

Redirect Examination by Defendants.

Witness says that when there was a difference of opinion on the Board of Equalization as to the valuation of property, they all talked it over and argued on it. They went up to Sequim once, he thinks, and looked over the property; thinks the Board also made a trip of inquiry to Port Angeles and looked over the property there in 1914. They went down Front Street and up the hill through the regrade district, and back down on First Street, and to the court house. There had been protests made about the assessments being too high. The assessor's figures were not changed very much. There may have been a few instances, but the witness does not recall of any.

Q. (By defendants' counsel) You concluded that the assessments made by the assessor were as nearly correct as could be made?

A. Yes, sir.

(Record, pages 548, 549).

Testimony of the defendants' witness, John C. Hansen:

Q. What rate did you assess it at in 1912?

MR. EWING: I object to that on the ground that the Board of Equalization does not fix the assessment. That is a matter that is fixed by the assessor entirely.

Q. What rate did you understand when you were equalizing the rolls in 1912 that the timber land of these plaintiffs and others were assessed at?

A. I could not tell you, that would be the outside zone, and in 1912 the assessor fixed it at eighty cents for fir, cedar and spruce,

eighty cents, and the inside zone seventy cents for spruce, fir and cedar.

Q. But I am asking you at what proportion of its value did you understand that the assessor was assessing the timber land?

A. I did not ask the assessor. I had my own opinion, and I have always gone according to my own opinion. My opinion is that that was assessed at least one-third at that time.

Q. That that was less than one-third of the value of the property?

A. Yes, sir.

Q. That the timber lands then that were assessed eighty cents on the dollar were worth two dollars and twenty cents?

A. Two dollars and fifty, it was worth it, and two years ahead of that it was worth fifty cents more yet.

Q. Then your idea was that in 1912, with reference to the equalizing of the roll of 1912, that the timber lands that were assessed at eighty cents a thousand were worth two dollars and fifty cents a thousand?

A. Yes, sir.

* * * * *

Q. In your judgment, when you equalized the roll for 1914, you considered that the timber lands of the plaintiffs were worth no more on the market than they were in 1912 when you equalized them?

A. Just about the same. They were worth more in 1908, 1907, 1909 and 1910.

Q. If they were not worth more in 1914 when you equalized them, than they were in 1912, why did you assess them more?

MR. FROST: I object to that on the ground that it is an improper question, an inquiry of the Equalization Board as to their

reasons and mental process that they employed in fixing and determining the assessed value of any article or property that they had to do with.

MR. EWING: And for the further reason that the Board of Equalization has nothing to do with fixing the assessment. That is a matter entirely in the hands of the assessor.

Q. (Mr. Peters) When you were called upon to pass upon this roll of 1914, did you observe that the timber lands of the plaintiffs here were assessed at considerably more than they were in 1912?

A. They were ten cents more.

Q. They were assessed at ten cents a thousand more?

MR. FROST: May we stipulate that this objection goes to this whole line of testimony?

MR. PETERS: Yes, sir, the whole line of it. You may elaborate it when the referee writes up his notes in any way you want to.

WITNESS: I don't care what he asks. I am not defending anybody. I did my duty, and that is all I care about. You may ask all the questions you want. I remember the transaction.

Q. Why did you consent to the approval of the roll in 1914 that assessed these timber lands at ten cents a thousand more than in 1912, when they were worth no more in your judgment on the market in 1914, than they were in 1912?

A. 1912 was not assessed high enough.

Q. 1912 was not assessed high enough?

A. No, sir. The assessors did not make a

raise as high, as in my opinion it should have been.

(Record, pages 642, 645).

* * * * *

- A. Of course, the assessor, in his opinion, assessed it at fifty per cent, but I am not agreeing with him. I may pass upon it and all that, although I may say this cow you have here assessed as twenty dollars, and I maintain that the cow was worth sixty dollars, but at the same time I may have let it pass and that cow should have been assessed at thirty dollars.
- Q. At what basis did you understand at the time you were acting upon the Board of Equalization in August, 1914, that the assessor had intended to assess this timber at?
- A. I do not understand; I do not know what he did, and I never knew what he had assessed the timber at until the Board of Equalization met; because John Hallahan is one of the kind of fellows, and I would say, "John, what are you doing," would say I can get my knowledge on the first Monday in August, the same as everybody else did. That is the kind of a fellow John Hallahan is.
- Q. Did you understand when you were sitting on the Board of Equalization that you had no power to raise or lower the taxes or the valuations as assessed by the county assessor?
- A. Did I understand I had no power to raise or lower? No, sir, I did not understand that.
- Q. Did you understand that you had no

power to raise or lower the assessments of the assessor?

A. No, sir.

Q. What did you understand about it, that you could raise it?

A. That we could raise it within a certain length of time. We can lower it during all the time, during the three weeks, but for raising we must send out notices in the first ten days.

(Record, pages 645, 646).

* * * * *

Q. What was the basis you used by the assessor for the assessment of city property in Port Angeles upon the roll of 1914, that came up to you for equalization?

OBJECTION.

MR. PETERS: While that seems to be true of this matter so far as his duties as a public official are concerned, we desire to accentuate his ignorance.

A. Well, I cannot answer for the assessor, although I do not want to be unfair. I supposed he used the fifty per cent basis, as near as he could, according to his judgment. He may differ from me. Mr. Earle knows that we had great big cards, and we had every lot on that card, and we went over those cards, lot by lot, and we went and inspected the lots, not over the whole townsite, but over the main places where we felt it might have stood a little higher, or a little lower, and we used them on the Board as a whole. I even put my figures on; I took all of the Board of Equalization, and I says, "Let's put the figure here on this one and this one and see how it will come out, and we tried to change the assessment a little bit there down town,

and by the time we got through considering it and reconsidering it, the assessor's figures were the best and we let them stand.

Q. How did you try to change them?

A. Add values.

Q. What changes did you try to make?

A. What do you mean?

Q. You said you tried to change them and put them on a list and cover it up?

A. One man comes up and says this: "Somebody else says my property is assessed too high in comparison with this man opposite, and for instance if he has got one marked down here ten thousand dollars and we will make this one nine thousand dollars and see how it will work through the block. My figures are still on the cards and you can look at them how we did. When we got through we all concluded that the assessor's figures were just about right, as right as any man at that time could get them.

Q. And you made no changes?

A. Yes, we did make some changes.

Q. You did not consider that the assessor's figures were all right?

A. No; but what stands we did not change. We considered we could not better it any.

(Record, pages 647, 648).

The contentions of the appellants embodied in their attack upon the assessment of timber lands by zones seems to be rested entirely upon the decision of the Supreme Court of Wisconsin in *Hershey vs. Board of Supervisors of Barron County*, 37 Wis. 75. We have paid some attention to that

case in a previous portion of this brief, but the emphasis apparently laid upon the decision perhaps warrants a further brief reference to it.

It will be noted that the Wisconsin court rests its decision upon the peculiar requirements of the Wisconsin statute, which has very little in common with the Washington statutes under which the assessments here in controversy were made. The Wisconsin statute is quoted by the court:

“Real property shall be valued by the assessor from actual view, at the full value which could ordinarily be obtained therefor at private sale, and which the assessor shall believe the owner, if he desires to sell, would accept in full payment. In determining the value, the assessors shall consider as to each piece, its advantage or disadvantage of location, quality of soil, quantity and quality of standing timber, water privileges, mines, minerals, quarries, or other valuable deposits known to be available therein, and all buildings, fixed machinery and improvements of every description thereon, and their value.

(Sec. 16, ch. 130 Laws of 1868.)”

Analyzing this statute in its application to the case then before it, the Supreme Court of Wisconsin says:

“The assessor is required to make the valuation from actual view, and he is called upon to

exercise his judgment with reference to each tract, its advantage or disadvantage of location, the quality of the soil, the quantity and quality of standing timber; in short, he is to consider all the elements which enter into and constitute its value."

(Hersey vs. Board of Supervisors of Barron County, 37 Wis. 75 (79)).

Without being subject to the operation of the Wisconsin statute, it so happens that the assessor of Clallam County brought his assessment within the literal requirements of that statute, as stated by the court. Although not required by the laws of Washington to make an actual view of the premises, the assessor of Clallam County in these cases did exactly that through the cruisers who made the cruise.

"Q. (Mr. Ewing.) Mr. Hallahan, were these men here, whose names have been mentioned, Mr. Crueger, and the other men employed as cruisers and the men who gathered the data from which these books were made, deputy assessors?"

A. They were in a sense. They were assessing officers of the county. Each one of them took an oath to perform the duties of that particular office during the period he was in the field, and if he should for any reason have violated any of the laws of the State while in the field, he was to be subject to prosecution.

Q. And these data, including agricultural

lands, and other lands, non-timbered lands, and timber lands, were all compiled and collated under your direction while you were assessor?

* * * * *

A. Yes, sir."

(Record, pp. 295-296).

The Wisconsin court says:

"and is called upon to exercise his judgment with reference to each tract, its advantage or disadvantage of location, the quality of the soil, the quantity and quality of standing timber; in short, he is to consider all of the elements which enter into and constitute its value."

The record, on page 268 *et seq.*, shows the detailed manner in which the Clallam County timber lands were valued for assessment. Referring to the volume containing the cruise of Section 31, in Township 30 North, Range 12 West, which is the land of the Clallam Lumber Company, the witness Hallahan explains that the small subdivisions represent ten acre tracts, the designations of them being in the diagram or map in the upper left hand corner of the page. The letter "F" represents fir; the figures following the letter represent the number of trees on that ten acres. The next figure is the figure "A", a small "a", representing the average number of thousands of feet, board measure, contained in each tree. In the ten acres used for illustration the

record shows fifty fir trees of the average of 15,000 feet to the tree. The next letter represents trees of a smaller average of board measurement. In the illustration used by the witness the figure represents fifteen fir trees, with 8,000 feet, board measure, to the tree. The next letter "S" is spruce. There are 4,000 feet of timber in each single tree. The next letter is "C", which represents cedar, of which there is none on the ten acres used for illustration. The next letter, "H", represents hemlock and in the illustration given fifty hemlock trees average 2,000 feet, board measure, per tree. The cruise represents the tree count upon each ten acres in each section. The cruise in each forty acres is totaled up for each forty acres or government lot smaller than forty acres. The characters "H-P" represents hemlock piles or poles; and in an illustration used by the witness three trees are indicated on the cruise. "H-T" represents hemlock ties, of which there are one hundred twenty-five in the forty acre description used by the witness for illustration. At the top of the map, in the upper right hand corner, there is another plat which is a topographic sketch made by the cruiser in the field of each forty acres there, a double run, the cruiser starting at the east, in the corner, and coming back up through the center in each ten-acre tract, the cruiser traveling

one mile through each ten acres and tying to his original corner by finding the stake. Doubling back and traversing the section he would have gone through each forty-acre piece twice and through the center of each ten acres. The figures on the ten-acre tracts represent the elevations taken by aneroids. Representations of green, bushy stuff on the plat refer to a swamp. A dotted line indicates a trail traversing the section east and west. The total shown in the tabulation indicates the total amount of feet of each variety of timber, and in making the assessment, dead and down fir is not used; it is not considered at all. The tabulation further shows the percentage of different grades of logs, designating them as No. 1, or first-class logs, and No. 2, or merchantable. In the illustration used, the tabulation shows forty per cent No. 1 fir, forty per cent merchantable, and twenty per cent No. 3 logs. The same classification holds as to spruce and hemlock, with different figures, indicating the quantity of each kind of timber. Following on down the right side of the page, under the heading of "General Description," the cruise gives the character of the surface of ground as to its roughness and smoothness, the character of the soil, the character of clearing, improvements, if any, and the general classification of the lands. Over on the left-hand corner of the page, under the illustration

used by the witness, under the heading "Character of Timber," is the notation of fir, which gives the quality as being old growth, good quality, averaging one hundred sixty feet long, smooth and sound, excepting that about twenty-five per cent shows signs of ground-rot. The balance of the different varieties of timber are classified the same way. Coming under the heading of "Logging Conditions," the cruise record indicates the character of the conditions. In the illustration used by the witness the ground is the very best. The surface is nearly level, the undergrowth light, very few windfalls, timber to be handled with railroad spurs and donkey engines west to the Sol Duc River, and thence down the river by railroad.

With reference to Sec. 15, Twp. 29, R. 13, and the map in the upper right-hand corner of the page, the coloring in yellow represents land that has been burned over.

All the timber lands in Clallam County were cruised with equal care, and the assessor has the same report of conditions and the same kind of information concerning all the timber lands in that county. Mr. Duvall had absolute charge of the cruising in the field, and his work was very correct and complete. The valuations placed on the timber lands in Clallam County for the year 1914 by the

assessor were made upon the basis of these cruises. (Record, pp. 268, 269, 270, 271, 272 and 273.)

All of the requirements of the Wisconsin statute are met by these Clallam County cruises; and every objection that the Wisconsin court found to the assessment in controversy in the *Hersey* case is obviated by the particularity and detailed information afforded by the Clallam County cruises.

The appellants' whole argument based upon a comparison of percentages of real valuation to assessed valuation is inherently fallacious; percentages are deductions arrived at by mathematical calculations, and in comparing the percentages of real value at which timber lands in Clallam County are assessed with the percentages of alleged real value at which other property in the county is assessed, the appellants must of necessity presuppose the dishonest action of the assessing officers of Clallam County and assume the infallibility of the appellants' own witnesses and their testimony as to valuations upon other classes of property from which the alleged discriminatory percentages are derived. By such a course of reasoning, whenever a protesting taxpayer could obtain witnesses to testify that other classes of property have an actual value of a certain fixed sum greater than that

ascribed to it by the assessor, he could conclusively demonstrate a discrimination practiced against him by showing that the percentage resulting from a determination of the ratio of the assessed value to the real value of such other classes of property was less than the percentage ascertained by determining the ratio of the assessment to the real value of his property. The percentages alleged to be discriminatory in such a case will necessarily vary with the opinions of witnesses as to the value of property which is the basis from which the percentages are computed.

“If the local assessors throughout the state are bound to adopt some certain rule or method in reaching assessable values and if their assessments must fail unless, when questioned, they can state some certain rule or method by which they were guided, I believe a large measure of their assessments would fail to withstand the assaults of the taxpayers.”

Opinion of Robert Earl, Referee, Special Franchise Tax Cases, afterward decided and report in People ex rel. Metropolitan Street Railway et al. vs. State Board of Tax Commissioners, 67 N. E. 69.

Upon such a contention the appellants necessarily reverse the rule of presumption which obtains in such cases, and in order to substantiate their theory the presumption must be necessarily

indulged that the valuation placed upon such other classes of property by witnesses testifying to values are conclusively correct and the figures placed thereon by the assessor are presumptively incorrect. The presumption which the law indulges in cases of this sort is exactly contrary to such a theory, and is all in favor of the taxing and equalizing officers.

“The law constantly presumes that public officers charged with the performance of official duty have not neglected the same, but have duly performed it at the proper time and in the proper manner. In the absence of evidence to the contrary, this presumption will prevail, but it is not an indisputable one and may be overcome by countervailing evidence. Where the rights of the public require it the presumption in favor of due performance is liberal, and the evidence to overthrow it must be clear. This presumption is in accordance with the established and familiar maxim, *Omnia presumuntur rite et solemniter esse acta donec prebetur in contrarium*—everything is presumed to be rightly and duly performed until the contrary is shown. The presumption is constantly indulged in support of all kinds of official action.”

Meacham on Public Officers, Section 578.

“The assessor and board of equalization act in a quasi judicial capacity in making or equalizing assessments. The law presumes that they have performed their duty in a proper manner. Where the rights of the public re-

quire it, the presumption in favor of due performance is liberal, and the evidence to overturn it must be clear."

Templeton vs. Pierce County, 25 Wash. 377 (382).

"That the assessor in placing valuations upon property acts in a quasi judicial capacity, and the law presumes that he has performed his duty in a proper manner; that this presumption is liberal, and the evidence to overthrow it must be clear."

N. P. R. Co. vs. Pierce County, 55 Wash. 108 (111).

"The assessor in placing valuations upon property for the purpose of assessment acts in a quasi judicial capacity, and the law presumes that he has done his duty in a proper manner, and, as we said on another occasion, this presumption is liberal, and is not to be overturned except by clear and convincing evidence. *North-ern Pac. R. Co. vs. Pierce County*, ante, p 108, 104 Pac. 178."

Vancouver Water Works Co. vs. Clarke County, 55 Wash. 112 (115).

"It will not do to convict public bodies, the members of which are acting under the sanction of an oath, of improper action, without proof which can be fairly explained upon no other hypothesis than that of such improper action."

Olympia vs. Stevens, 15 Wash. 601.

A reason for the presumption may be found in

the language of the Supreme Court of the United States in its decision in *The State Railroad Tax Cases*, 92 U. S. 575, 23 L. Ed. 663, where it says:

“As all valuation of property is more or less matter of opinion, we see no reason why the opinion of this court, or of the Circuit Court, should be better or should be substituted for that of the board, whose opinion the law has declared to be the one to govern in the matter.” (P. 672.)

“The inequality of which complaint is made is one that is general in its nature. If the plaintiff’s attack were allowed to prevail, the whole assessment roll might be invalidated, and serious embarrassment might be caused to governmental operations. I do not think that the exercise of the equitable power of the court can be invoked to accomplish the subversion of a general scheme of assessment and taxation, which has been adopted by the department of government constituted for the purpose.”

Mercantile National Bank vs. New York, 172 N. Y. 35, 64 N. E. 756 (761).

It is doubtless, because of the chaotic results which would follow the judicial sanction of a scheme of comparison based upon percentages derived by mathematical calculation computed upon varying factors of actual valuation (because dependent upon opinions of persons holding different views), that the courts have limited comparisons of this sort to

like property of similar character, similarly situated and of similar value by reason of similar use.

Templeton vs. Pierce County, 25 Wash. 377, *supra* (382).

Vancouver Waterworks vs. Clarke County, 55 Wash. 112 (114, 115).

N. P. R. Co. vs. Pierce County, 55 Wash. 108 (110, 111, 112).

Collins vs. King County, 80 Wash. 251 (252, 253, 154).

Sanitary Dist. of Chicago vs. Gifford, 100 N. E. 953 (955), 257 Ill. 424.

Appellants have interspersed a complicated and elaborate argument based largely upon fictions of their own creation, not founded upon proved facts in the record, with numerous citations of authority tending to establish legal propositions for which the appellants apparently contend. Most of these decisions we have ignored entirely because the arguments in support of which they are cited have, in our opinion, no bearing upon the real issues involved in this appeal.

The decision of these cases hinges upon questions of fact governed by principles of law established by the decisions which we have cited to the court and many others of similar tenor with which the court is undoubtedly familiar.

The assessments which are attacked were made by the officer charged by law with that duty; they were reviewed and equalized by boards constituted for that purpose, after full and fair hearings at which appellants were represented; the action of these officials has been reviewed by a trial court before whom numerous witnesses were examined, and who had ample opportunity to observe their manner of testifying and to judge of their qualifications and credibility; before whom much testimony was adduced not made a part of the record brought up to this court, and who has found the facts in this case, supported by a great preponderance of the evidence, and has entered a decree in accordance therewith. Under such circumstances, and in the light of the law submitted and the facts disclosed by the record, we respectfully submit that this court should affirm the decision of the trial court.

Respectfully submitted,

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Appendix

PORT ANGELES REAL ESTATE

Tabulated comparison of percentage of assessed valuation to the valuation placed upon the same parcels by certain witnesses.

1914 VALUATIONS

<i>Description of Property—</i>	<i>Ald- well</i>	<i>Hag- gith</i>	<i>Levy</i>	<i>Ware</i>	<i>Henry</i>
Block 1, Tidelands west of Laurel St...	42%	54%	39%	23%	45%
Block 1, Tidelands east of Laurel St....	50%	.....	46%	24%	45%
Block 2, Tidelands...	122%	.....	76%	24%	47%
Block 15, Townsite	40%	.....	37%	26%	47%
Block 14, Townsite	47%	44%	51%	22%	44%
Block 16, N.R. Smith's...	54%	52%	48%	27%	59%
Block 54, Townsite....	58%	.....	41%	32%	59%
Block 69	56%	.....	48%	40%	59%
Block 55	17%	.....	.....	.....	.....
Block 17	66%	.....	57%	24%	.....
Block 30	48%	.....	70%	26%	65%
Block 31	56%	.....	54%	22½%	65%
Block 32	80%	.....	.....	31%	70%
Block 2, East .....	.....	.....	.....	33%	120%
Block 17, Thompson & Goodwin and N. R. Smith's .....	.....	.....	57%	21½%	.....
Block 18, Strattons.....	.....	.....	54%	25%	53%
Block 19, Stratton's .....	.....	.....	51%	24½%	58%
Block 20, N. R. Smith's...	.....	.....	50%	23%	53%
Block 29, Stratton's.....	.....	.....	51%	25%	51%
Block 28, N. R. Smith's...	.....	.....	52%	22%	61%
Block 27, N. R. Smith's...	.....	.....	54%	20%	49%
Block 30, Thompson & Goodwin .....	.....	.....	.....	25%	58%
Percentage of entire ap- praisement as shown on following pages	50.7%	48%	49.8%	25%	54%

Plaintiff's Exhibit J is an estimate furnished by the witness Aldwell to the contractors of the value of certain property which is enclosed within the red line on the map of Port Angeles (Defendants' Exhibit 14). Mr. Aldwell testifies that he is not particularly impressed with the future of this property, and values it at \$80,000. The assessed valuation is \$59,300, or an assessment, according to Mr. Aldwell's judgment, of $74\frac{1}{8}$ per cent.

The same witness, Aldwell, during the trial, made an independent tabulation of certain of the property covered by Plaintiff's Exhibit E. A comparison of his figures showing his estimate of the value of this section of Port Angeles real estate on March 1st, 1914, with the assessment, gives the following result:

*Comparison of Assessed Valuation for 1914 with
the Valuation of T. T. Aldwell in Defendants'
Exhibit 17.*

<i>Description of Property—</i>	1914 Assessment (Defts. Ex. 14.)	Valuation by Aldwell (Defts. Ex. 17.)	Per Cent. of Assessment to Witness' Valuation
Block 1, Tide Lands, west of Laurel St., Lots 1 to 8	\$ 28,600	\$ 68,500	42%
Block 1, Tide Lands, east of Laurel St., Lots 1 to 9	34,500	69,500	50%
Block 2, Tide Lands, Lots 1 to 9	21,400	17,500	122%
Block 15, Town Site, Lots 1 to 20	50,300	126,000	40%
Block 14, Town Site, Lots 1 to 5, 16 to 20	17,500	37,000	47%
Block 16, N.R. Smith's, Lots 1 to 3, 7 to 18	38,100	70,500	54%

<i>Description of Property—</i>	1914 Assessment (Defts. Ex. 14.)	Valuation by Aldwell (Defts. Ex. 17.)	Per Cent. of Assessment to Witness' Valuation
Block 54, Town Site, Lots 1 to 9, 12 to 18	6,200	10,600	58%
Block 69, Lots 4 to 15	4,000	7,100	56%
Block 55, Lots 1 to 5.....	350	2,050	17%
Block 17, Lots 1 to 18	15,200	22,950	66%
Block 30, Lots 1 to 18	8,860	18,250	48%
Block 31, Lots 1 to 18	18,900	33,700	56%
Block 32, N.R.Smith's, Lots 2, 4, 5 and 18	4,600	5,700	80%
Total	\$248,510	\$489,350	
Average per cent.....			50.7%

PORT ANGELES VALUATIONS

A Comparison of 1914 Assessed Valuations with the Valuations Placed by Witness C. L. Haggith (Defendants' Exhibit 37) for the Same Year; And the Per cent. of Assessment to Witness' Valuations.

<i>Description of Property—</i>	Assessed Value 1914	Values C.L.Haggith 1914	Per Cent.
Block 121, Townsite, Lots 1 to 20	\$ 810	1,790	45%
Block 142, Lots 1 to 20	740	1,890	40%
Block 71, Lots 1 to 20	6,000	10,400	58%
Block 166, Lots 1 to 18	4,520	9,550	47%
Block 231, Lots 1 to 18	4,280	9,400	46%
Block 380, Lots 1 to 18	1,940	3,675	53%
Block 421, Lots 1 to 10	820	1,600	51%
Block 307, Lots 1 to 20	640	1,400	46%
Block 100, Lots 1 to 20	1,400	3,750	37%
Block 377, Lots 1 to 20	1,000	2,305	44%
Block 288, Lots 1 to 18	3,060	4,900	62%
Block 36, Lots 1 to 20	10,050	22,800	44%
Block 12, Lots 1 to 20	10,300	27,600	37%

<i>Description of Property—</i>	<i>Assessed Value 1914</i>	<i>Value C.C.Henry 1914</i>	<i>Per Cent.</i>
Block 34, Lots 1 to 20	16,500	26,550	62%
Block 97, Lots 1 to 20	8,560	17,000	48%
Block 327, Lots 1 to 20	3,360	7,550	45%
Block 341, Lots 1 to 18	2,360	5,800	41%
Block 14, Lots 1 to 20	31,000	70,000	44%
Block 25, N.R.Smith's, Lots 1 to 18.....	5,300	12,300	43%
Totals	\$110,920	\$231,290	
Average per cent.....			48%

PORT ANGELES VALUATIONS

A Comparison of 1914 Assessed Valuation with Valuation Placed by Witness Lewis Levy (Defendants' Exhibit 35) for the Same Year; And the Per Cent of Assessment to Witness' Valuations.

<i>Description of Property—</i>	<i>Assessed Value 1914</i>	<i>Value Lewis Levy 1914</i>	<i>Per Cent.</i>
District No. 1: .			
Block 1, Tidelands, West of Laurel St., Lots 1 to 10	\$ 36,000	\$ 91,500	39%
Block 1, East of Laurel St., Lots 1 to 9	34,500	74,500	46%
Block 2, East of Laurel St., Lots 1 to 9	21,100	27,500	76%
Block 14, Townsite, Lots 1 to 20	31,000	60,500	51%
Block 15, Townsite, Lots 1 to 20	50,300	135,500	37%
Block 16, N.R.Smith's, Lots 1 to 18	47,110	97,500	48%
Block 31, N.R.Smith's, Lots 1 to 4, 10 to 18	9,300	17,100	54%

<i>Description of Property—</i>	<i>Assessed Value 1914</i>	<i>Value Lewis Levy 1914</i>	<i>Per Cent.</i>
Block 30, N.R.Smith's, Lots 7 to 12	4,300	6,200	70%
Block 21½ (Dist. No. 2), East, Lots 1 to 5 and 7	2,200	2,000	110%
Block 3, East, Lots 1 to 9	6,540	3,000	218%
Block 3½, East, Lots 1 to 9	1,150	2,000	57½%
Block 4, East, Lots 1 to 9	3,140	2,500	125%
Block 4½, East, Lots 1 to 9	1,020	1,500	68%
Block 5, East, Lots 1 to 9	2,380	2,500	95%
Block 5½, East, Lots 1 to 9	790	1,500	53%
Block 6, East, Lots 1 to 9	1,530	1,500	102%
Block 6½, East, Lots 1 to 9	530	1,500	35%
Block 7, East, Lots 1 to 9	2,550	1,500	170%
Block 7½, East, Lots 1 to 9	840	1,500	56%
Block 17, Thompson & Goodwin's, Lots 1 to 6, 13 to 18; N. R. Smith's, Lots 7 to 12	15,200	26,700	57%
Block 18, Stratton's, Lots 1 to 4, 15 to 18, and N. R. Smith's, Lots 5 to 14	11,490	21,200	54%
Block 19, N.R.Smith's, Lots 1 to 7, 12 to 18; Stratton's, 8 to 11	10,160	19,800	51%
Block 20, N.R.Smith's, Lots 1 to 18	8,050	16,000	50%

<i>Description of Property—</i>	<i>Assessed Value 1914</i>	<i>Value Lewis Levy 1914</i>	<i>Per Cent.</i>
Block 27, N.R.Smith's, Lots 1 to 8, 10 to 14	4,750	8,800	54%
Block 28, N.R.Smith's, Lots 8 and 9	1,400	2,700	52%
Block 29, Stratton's, Lots 1 to 4, and N. R. Smith's, Lots 5 to 9	5,700	11,100	51%
Block 54, Townsite, Lots 1 to 5, 12 to 18	4,500	11,100	41%
Block 34, Townsite, Lots 1 to 20	16,500	28,500	58%
Block 69, Townsite, Lots 4 to 9	2,150	4,500	48%
Block 66, Leighton, Lots 4 to 18	840	1,500	56%
Block 71, Townsite, Lots 1 to 20	6,000	10,400	58%
Block 2, Tidelands, West, Lots 1 to 5	7,600	18,000	42%
Block 12, Townsite, Lots 1, 2, 5 to 20	10,300	19,000	54%
Block 13, Townsite, Lots 1 to 9, 11 to 20	19,000	34,500	55%
Block 211, Townsite, Lots 1 to 18	940	1,000	94%
Block 265, Townsite, Lots 1 to 4, 16 to 20	2,010	3,600	56%
Block 287, Townsite, Lots 1 to 18	2,400	3,800	63%
Block 375, Townsite, Lots 1 to 20	1,320	2,325	57%
Total	\$386,590	\$775,825	
Average Percentage			49.8%

CITY VAL

*A Comparison of 1912 and 1914 Assessed Valua
Ware (Plaintiffs' Exhibit 2), for the Same
Valuations.*

Description of Property—

Block 1, Tidelands, west of Laurel St., Lots 1 to 10.....	
Block 1, East of Laurel Street, Lots 1 to 9	
Block 2, East of St., Lots 6 to 9	
Block 14, Townsite, Port Angeles, Lots 1 to 5, 16 to 20	
Block 15, Townsite, Port Angeles, Lots 1 to 20	
Block 16, N. R. Smith's, Lots 1 to 18	
Block 17, N. R. Smith's, Lots 8 to 11	
Block 32, Townsite, Lots 2 to 5	
Block 31, N. R. Smith's, Lots 1 to 9	
Block 30, N. R. Smith's, Lots 8 and 9	
Dist. No. 3, Blk. 2, East, Lots 1 to 5	
Block 17, Thompson-Goodwin, Lots 1 to 7, 12 to 18..	
Block 18, Stratton's and N. R. Smith's, Lots 1 to 18..	
Block 19, Stratton's and N. R. Smith's, Lots 1 to 18..	
Block 20, N. R. Smith's, Lots 1 to 18	
Block 30, Thompson & Goodwin, Lots 1 to 7	
Block 29, Stratton's and N. R. Smith's, Lots 1 to 9.....	
Block 28, N. R. Smith's, Lots 8 and 9	
Block 27, N. R. Smith's, Lots 1 to 8	
Dist. No. 4, Blk. 30, Thompson & Goodwin, Lots 10 to 14	
Block 31, N. R. Smith's, Lots 14 to 18	
Block 54, Townsite, Lots 1 to 5, 12 to 18	
Block 69, Townsite, Lots 4 to 9	
Totals.....	
Less parcels not listed 1912	
Average per cent.	

UATIONS

tions with the Valuations Placed by Witness W. J. Years; and the Per Cent. of Assessment to Witness'

Assessed Value 1912	Value W.J.Ware 1912	%	Assessed Value 1914	Value W.J.Ware 1914	%
\$ 16,440	\$ 96,000	17%	\$ 36,000	\$152,000	23%
12,860	84,500	15%	34,500	151,000	24%
3,980	31,000	13%	11,500	48,000	24%
7,750	41,000	19%	17,500	80,000	22%
21,450	121,500	18%	50,300	192,500	26%
17,695	90,500	19½%	46,110	170,000	27%
2,300	9,500	24%	6,000	19,000	32%
Not listed 1912			5,600	18,000	31%
6,200	29,000	21%	14,500	57,500	25%
600	4,750	13%	2,500	8,500	29%
2,800	14,500	19%	9,600	29,000	33%
4,450	21,250	21%	9,200	42,500	21½%
6,650	24,850	27%	11,490	46,000	25%
6,020	20,650	29%	10,160	41,250	24½%
5,250	17,700	30%	8,050	35,250	23%
2,150	9,950	22%	4,500	19,500	23%
2,900	11,850	24½%	5,700	23,000	25%
750	3,500	21%	1,400	6,500	22%
2,050	6,700	31%	3,250	16,500	20%
390	2,150	18%	1,270	5,100	25%
1,500	4,000	37½%	2,400	8,000	30%
Not listed 1912			{ 2,150	8,000	27%
Not listed 1912			{ 2,350	6,300	37%
			2,150	5,400	40%
124,185	644,850		298,180	1,188,800	
			12,250	37,000	
			285,930	1,151,800	
		19%			25%

PORT ANGELES VALUATIONS

*Comparison of Assessed Valuations for 1914 with
the Valuations of C. C. Henry in Defendants'
Exhibit No. 36, and Per Cent. of Assessment to
Witness' Valuations.*

<i>Description of Property—</i>	<i>Assessed Value 1914</i>	<i>Value C.C.Henry 1914</i>	<i>Per Cent.</i>
Block 1, Tidelands, West of Laurel St., Lots 1 to 10	36,000	80,000	45%
Block 1, East of Laurel, Lots 1 to 9	34,500	76,000	45%
Block 2, East of Laurel, Lots 6 to 9	11,500	24,500	47%
Block 4, Townsite, Port Angeles, Lots 1 to 20	17,500	40,100	44%
Block 15, Townsite, Lots 1 to 20	50,300	106,500	47%
Block 16, N.R.Smith's, Lots 1 to 18	46,110	78,500	59%
Block 17, N.R.Smith's, Lots 8 to 11	6,000	7,500	80%
Block 32, Townsite, Lots 2 to 5	5,600	8,000	70%
Block 31, N.R.Smith's, Lots 1 to 9	14,500	28,500	51%
Block 30, N.R.Smith's, Lots 8 and 9	2,500	3,200	78%
Block 2, East, Lots 1 to 5	9,600	8,000	120%
Block 27, Thompson- Goodwin, Lots 1 to 18	9,200	15,700	59%
Block 18, Stratton's, Lots 1 to 5	3,190	6,000	53%
Block 18, N.R.Smith's, Lots 6 to 13, and Stratton's 14 to 18..	8,300	15,800	53%

<i>Description of Property—</i>	<i>Assessed Value 1914</i>	<i>Value C.C.Henry 1914</i>	<i>Per Cent.</i>
Block 19, N.R.Smith's, Lots 1 to 7, 12 to 18, Stratton's, 8 to 11.....	10,160	17,300	58%
Block 20, N.R.Smith's, Lots 1 to 18	8,050	15,200	53%
Block 30, Thompson- Goodwin, Lots 1 to 7	4,500	8,600	52%
Block 29, Stratton's, Lots 1 to 5, and N. R. Smith's, 6 to 9.....	5,700	11,200	51%
Block 28, N.R.Smith's, Lots 8 and 9	1,400	2,300	61%
Block 27, N.R.Smith's, Lots 1 to 8	3,250	6,600	49%
Block 30, N.R.Smith's, Lots 10 to 14	1,270	2,200	58%
Block 31, N.R.Smith's, Lots 14 to 18	2,400	3,000	80%
Block 54, Townsite, Lots 1 to 5	2,150	4,200	51%
Lots 12 to 18	2,350	3,500	67%
Block 55, Townsite, Lots 5 and 6	140	200	70%
Block 69, Townsite, Lots 4 to 9	2,150	3,650	59%
Total	\$298,320	\$576,250	
Average Per Cent.			54%

ABSTRACT OF TESTIMONY OF DEFEND-
ANTS' WITNESSES CONCERNING TIMBER,
ITS VALUE AND AVAILABILITY.

JOHN HALLAHAN:

Direct Examination

Vol 2, page 258—

Was County Assessor of Clallam County in 1912 and 1914. Had charge of the timber cruise in Clallam County. Prepared a map (Exhibit 18) showing most of the timber holdings. It showed all the large owners.

Pages 259-60—

Defendants' Exhibit 18 shows the assessment for 1914 and the ownerships.

Pages 261-2—

Points out the holdings on the map.

Pages 268-272—

Witness explains a sheet from the county timber cruise, explaining method of compilation and meaning of each term.

Page 271 —

The dead and fallen timber is enumerated in the cruise but is not assessed and not considered at all.

Page 273—

The work has been done by Mr. Duvall and has been very correct and complete.

R. H. THOMSON:

Direct Examination

Page 301—

He is a civil engineer. His competency in all scientific lines is conceded by plaintiff. In 1891 he personally did the work and reported on the estimated cost of a railroad in Clallam County from the mouth of the Pysht River to the Sol Duc by way of Beaver Creek, and found the possibility of building a railroad on several different grades depending on the amount the parties wished to spend. One route had a maximum grade of 2% and the other a maximum of 3%.

Page 302—

One route with a maximum grade of 2% was twenty-one miles in length, and the estimated cost \$320,000.00. The other was between sixteen and seventeen miles in length at a maximum grade of 3%, and was estimated to cost \$210,000.00.

Page 303—

If he were at present building a logging road into that country, would not hesitate to use a sixteen or eighteen degree curve, and would not hesitate to cheapen the road by introducing as

high as five and six per cent. grade. Result of which would be to reduce the cost not to exceed \$9,500.00 per mile (or \$156,750.00 for sixteen and a half miles.) In 1891 he estimated the cost as over \$12,000 a mile for the 3% grade, and over \$16,000 per mile for the 2% grade.

Cross-Examination

He did this work for the firm which is now Merrill & Ring. Knew nothing of the ownership of the timber lands on the Pysht.

Page 304—

A Mr. Young, of Saginaw, Michigan, came out under instructions to get a careful estimate of the cost of a road from the Sol Duc. Mr. Thomson went with him, with men, and staid up in the country until they were satisfied with their information, but he did not know until he wrote his report who it was done for, and never saw any member of the firm until a Mr. Merrill introduced himself to the witness about three minutes before the witness took the stand. The only notice the witness had that he was to be called was a notice he got from Mr. Ewing.

ALEX. POLSON:

Direct Examination

Page 305—

He is a logger and lumberman. Has bought

and sold timber and timber lands in the State of Washington. Has been in the lumber and logging business in Washington since 1879, and in that business for over forty years. His principal logging operations are at Hoquiam. Is familiar with the value of timber and timber lands throughout the Northwest, and in the State of Washington in particular. He has examined the county cruises of plaintiffs' holdings and the holdings in Zone number 1 of the Puget Sound Mills & Timber Company, and those of Merrill & Ring and the Goodyear Company. He has known Lou Duvall.

He has not examined the Lacey timber expertly.

He does not make it a practice to go and personally inspect every tract of timber he buys. He buys upon the cruises of a responsible cruiser.

Cross-Examination

He examined these cruises a week or ten days ago in Mr. Frost's office and went over most all of plaintiffs' lands.

Page 306—

Made no tabulated statement; was at it nearly a day; he took a section; took the num-

ber of feet per thousand of fir, spruce, cedar and hemlock; looked at the topography on the map to see whether it was rough or level, and looked at the quality of the timber that was given in the report as he would any cruise when he sent cruiser to look at it.

Page 307—

Then after examining one page that way he would turn to another page and so on, and was engaged at that for about a day. He took no memorandum. "I formed an opinion as I would from any cruise." Mr. Frost told him where the plaintiffs' lands were and they had a colored map of those holdings, too. They looked at each one of the sections and then referred to them in the books. He might not have examined all of the forties of the plaintiffs, but did examine nearly all the sections, the solid sections.

Page 308—

He has not now in his mind the data on any particular sheet without looking at it or the townships in which plaintiffs' lands lie, nor how the timber graded in any particular section without going to the records.

Direct Examination

The Lacey timber was worth \$2.00 a thous-

and for the fir, spruce and cedar on March 1, 1912, and approximately the same on March 1, 1914, and the hemlock if it was put into the water is not of much value, because hemlock sinks, but if it was milled on the ground, should have some value, ten, fifteen or twenty cents per thousand. The timber in Zone 1 of Merrill & Ring, Goodyear and Puget Mills & Timber Company, was worth the same on March 1, 1912, as the Lacey timber, and was also worth the same in 1914.

Page 309—

He logs from 500,000 to 750,000 feet of timber per day. He operates privately-owned logging roads and hauls his logs twenty, twenty-five and thirty miles at the present time.

Some of the country over which he operates is broken, abrupt. Some is level. They got out three hundred million feet of timber and pulled it up a 5% grade to market. There would be no difficulty in operating a logging road seventeen miles long with an adverse grade of not over one and one-quarter per cent, the favorable grade of from 3% to 4% to tide water. Such a road can be operated successfully. The addition of from six to ten miles in the haul may make a difference of a cent or two (per thousand feet

of timber) in the operation of the logging road.

He has bought some timber from Eugene France of Hoquiam, the timber lying twenty miles from salt water.

Cross-Examination

He has never been upon plaintiffs' lands to make any minute cruise of them. He has seen the cruisers' reports for the owners by parties that made the cruise years ago, and that helps him to base his opinion. He has seen McGillicuddy's, Pable's and Lou Duvall's cruises, some of which were made for the witness and some were made for other parties. Knows the Merrill & Ring Company; is not a stockholder in it; supposes the Merrills and the Rings are stockholders in the Merrill & Ring Company.

The witness' company is the Polson Logging Company at Hoquiam, in which Merrill and Ring are stockholders, own one-half the stock, the witness one-fourth.

Never heard of any of the interior timber being logged or sawed. The Northern Pacific is the only commercial railroad leading north from Grays Harbor, and it terminates at Mo-clips. Two logging roads only, Polson's and the Coats-Fortney, lead north from Grays Harbor, Polson's road extending thirty miles from

salt water and the Coats-Fortney road extending in a northerly direction about ten miles.

Page 310—

Moclips is in township 20, range 12. Polson's road terminates at present in township 21, range 11, whence it is twelve miles to the northerly line of Chehalis County, and then Jefferson County lies between Chehalis and Clallam Counties. There is not very much of a fire hazard to which the timber in the interior is subject. Does not personally know the extent of the burnt area in the interior.

In case of damage to the Straits' timber by fire some might log it to the Straits, but witness would take it to Port Angeles if he was logging that whole country, all of it. He would mill it on the ground or take it to Port Angeles. In case of damage to the interior timber by fire there is no way to get it out except by building a railroad into the interior. The streams where the Lacey lands lie run westerly and southerly to the ocean. By rail is the only way the interior timber should come or could come out. Witness would bring it by rail to Port Angeles. Cannot tell how many miles long such a railroad would be. That would all depend on the grade you would want to make in the survey and that

differs according to the judgment of the particular individual.

Page 311—

The length of a railway in a straight line from the Lacey holdings to Port Angeles depends upon the point on the lands that you want to measure to.

Page 312—

He understands that the Milwaukee started one which now runs from Port Angeles westerly to the Earles' holdings. Does not know how much the cost of that railroad was per mile. Has no knowledge on the subject. In testifying to the value of this timber in the interior the witness took into consideration the necessity of constructing a railroad into the interior of Clallam County.

He calculated on a road from Port Angeles to get that timber and all the other timber in there. A road from Port Angeles into the interior of Clallam County at an estimated cost of construction from \$15,000 to \$20,000 a mile. Did not put down the number of miles.

Page 313—

"I was taking the quality of the timber and the ground, and what you would pay for the timber and the way you would build a road. I could

just as easy take that timber out as our own and pay \$2.00 a thousand." Would have to build a railroad first to reach it. Did not figure in his calculations upon any definite length of road. The road would terminate eventually at Grays Harbor, but would not take that into consideration in making his figures. He took into consideration reaching that body of timber and taking it out to Port Angeles, the shorter haul, instead of to Grays Harbor. Made no estimate in detail as to cost of this road. Those things have to be gone into but can't be done without making a survey of the road minutely. It can be approximated, but not minutely. Witness undertook only to approximate it. The road might be built for \$12,000 a mile. It might cost \$20,000.

Page 314—

In going over the cruises in the books found that some portions of Clallam Lumber Company's timber are quite high. Some of the timber is more expensive to move than others. Others is more cheaply moved. It will all average up to a certain figure. Did not minutely calculate the length of railroad necessary to reach every section of the Lacey holdings. It was not necessary. At present hemlock logs bring

from \$6.00 to \$7.00 a thousand; spruce from \$6.00 to \$12.00; fir \$6.00, \$8.00 and \$11.00. On March 1, 1912, prices were higher than now. Lumber was about \$1.00 higher on all grades. The Grays Harbor market is about the same as upon the Sound. The supply and demand in the log market since March 1, 1912, have remained about the same.

For several years there has not been a ready sale at good prices for all the lumber that can be manufactured in the mills of Washington and Oregon. That the market price of logs and timber has a tendency to be lower to a certain extent. That condition of affairs has existed since 1907.

Page 315—

From his view point he would rather not have any large new area of timber opened up on the market. It would give him a better market for what he is doing.

In all probability existing logging operations in Washington are not now all highly profitable. The witness could stand a good deal more. His judgment as to the value of this interior timber was practically the same before he looked at the books. Two or three weeks ago he first found from counsel for the defense that he was to be subpoenaed by the

defense. He was not asked what values he would put on the interior lands as compared with the lands on the Straits.

Witness knew what the lands on the Straits were assessed for. He knew it was assessed a good deal lower than his own. He looked that up because he goes before the State Board of Equalization every year. He wanted everybody assessed pretty nearly right so he would not have to pay all of the taxes.

The lands of the witness, twenty miles back, were assessed for over \$1.00 to every thousand feet of stumpage.

Page 316—

The hemlock was assessed from 25 cents to 40 cents per thousand feet stumpage in Grays Harbor County. The witness has had occasion to inform himself as to the value of timber lands all over the state. The witness has had occasion to find out what the interior lands of Lacey & Company were assessed for. He has been following that up for ten years, during which time he has formed his own personal opinion of their value.

He did not go down to see the lands in the interior any more than he goes to see his own lands. He has walked through them to see the

country and to see the timber twenty years ago, but has not been there since.

Page 317—

He has had cruisers' reports on all that country and its timber for the last ten years. He has had his own cruisers' reports on the character of the country; not that land, but the entire forest reserve of the Olympic mountains.

There is not a great deal of difference as to the quality, grade and value of the lands tributary to the Pysht and those along the Hoko. There is a little, but not much. They are approximately the same in value, grade and quality. It is all old enough.

Page 318—

The Merrill & Ring timber is older than Mike Earles' timber. The value between the younger timber and the older timber in 1910 and 1912 depends on what you want it for, sometimes the filling of an order requires old growth timber and sometimes younger. It all depends on what the market calls for. Does not know absolutely, but thinks the Milwaukee Railroad now terminates in the Michael Earles' holdings. Assuming that it does, he would not attach any greater value to the lands of Earles than to the lands of the plaintiffs.

Page 319—

Referring to the Lacey timber, witness says:
“If I wanted to move that timber in, the Milwaukee would soon build a railroad.”

WILLIAM J. CHISHOLM:

Direct Examination

Page 319—

Is a logger and has been for forty-five years, in Michigan, Minnesota and Washington. Has been in Washington eight years. Is general manager of the Merrill & Ring Logging Company. Thinks he is familiar with the methods and manner of logging in this part of the country, and is familiar with the cost of logging. Has built 400 or 500 miles of logging roads while he has been in the logging business. Is familiar with the operation of logging railroads.

Is acquainted with the value of logs in the Puget Sound market. He sells the logs. Is familiar with the value of standing timber to a certain extent. Has been over certain portions of the Goodyear, Merrill & Ring, Milwaukee Land Company, Continental Timber Company and Mike Earles' holdings, but not all of it. Has been across the Lacey holdings along the Sol Duc River from Lake Crescent to Mori, and from the Bear to Clallam along

the road. Is somewhat acquainted with the topography of this country. Is familiar with the conditions attending upon logging operations in the Straits zone and also in the interior. As to the difference in the cost of placing in the water the timber in zones 1 and 2, it depends on the quantity of timber to go out over certain roads.

Of two forty-acre tracts the one on the shore would log cheaper than one in the interior, but a big holding like the Lacey holdings would cost no more to log as against the other big holdings on the outside. The amount of timber is what makes the difference in the cost.

Page 320—

The Lacey timber would log into the waters of the Straits as cheaply as the outside timber, owing to the fact of the big holdings and the country in the interior being level. Has just looked over the county cruises.

Probably all that timber down there is worth \$1.50 per thousand "irregardless." The timber on the straits' zone was worth about the same in March, 1912. It remained about the same on March 1, 1914.

Cross-Examination

Has been with Merrill & Ring thirty-five

years. Has not been down on the Pysht River very long. Just a day or so at a time.

Is not in charge of the work they are doing there. First went on the Pysht about seven years ago. Was there then two or three days going through the timber giving it a general lookover. Merrill & Ring then had between 25,000 and 30,000 acres on the Pysht and have about the same tract today. Next time he was down there was a year ago last spring, just looking over the country, looking more at the mouth of the Pysht River at that time. Was there three or four days. Did not then go through the timber or cruise it. Was there again in August of 1914, running around through the timber, seeing where they could locate railroads and getting an idea of the timber and the cost to open it up. Has been there three or four times this year, about three days at a time. He is not interested with Merrill & Ring in the Pysht timber.

Has an interest in the property in Snohomish County. They are beginning to open up that property on the Pysht, but have not yet cut a timber tree. Has not done any logging in Clallam County, or been connected with anybody that is. Has not specifically examined the business and returns of any operating logging institutions down there. Merrill & Ring

own the mouth of the Pysht River on both sides. Was on the Goodyear tract, over their road and landing where they are going to dump and where they are cutting their timber. Saw all the operation there was.

Was down in the neighborhood of plaintiffs' lands in June or July this year. Drove through with Dwight Merrill, Mr. Schofield, Burnett Ring and T. D. Merrill. Did not get out of the automobile to go in through the timber. Their purpose was not to investigate the timber in the interior. Did not at that time know anything about this law suit. Had heard some talk, but does not remember that anything was said about it on that trip.

At that time did not make any investigation of the timber or land down there with respect to this law suit. His attention was not called to plaintiffs' lands. Did not pay any attention to plaintiffs' lands more than any other timber. Always looks at timber no matter where he goes. A man who follows the woods always does. They passed remarks about this timber. Knew that the Laceys were going to start suit, but did not know when and there was nothing talked about it at that time. Did not know until two days ago that he was to be a witness. Did not make any memoranda.

three days since he found out he was going to be a witness.

Does not know how many acres of plaintiffs' lands he investigated. He ran over different sections but does not remember the sections. Just so he could say that he had run them over. He took the county cruise and compared it with some of the Merrill & Ring cruises and the total amount, the total holdings of each party. He made such a comparison but did not put it on paper. Made it from looking at the county records. Saw the estimate of the timber, the Lacey timber, Merrill & Ring and Goodyear timber. He made no record of it, merely looked it over and compared it in his mind. He just took odd forties in different places and glanced through it. He looked at the totals and footed up the totals of the Lacey and Merrill & Ring timber. Don't know as anyone suggested his doing that. Saw people going up to look at the county records up here in this building. Did not know he was going to be put on the stand for a certainty until yesterday. When he looked at the timber books he did not know he was to be a witness.

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He looked over some of the Goodyear, Mer-

rill & Ring and Lacey timber, at just odd forties here and there, but no other timber. If the Laceys had one 40 acres in the interior and there was one 40 acres of timber land on the Straits, the Straits' timber would be more valuable because they could not afford to build a road into the timber for forty acres in the interior. It could be logged on the Straits with a donkey and without a railroad. There are operations under way now to take out the Merrill & Ring timber. It depends on conditions how much they will take out. If conditions may warrant they may put in from seventy-five to one hundred million feet a year. Should judge that Earles puts that much in, or probably more. His mill must cut that much. He probably puts in more than that. He figured out in his own mind, without making any memoranda, what it would cost to put a railroad down into the Lacey holdings after he heard Mr. Thomson's testimony yesterday.

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He had his figures made before Mr. Thomson testified, however. He figured it would cost about \$4,000 a mile to grade; that is, about \$80.00 a station, good and bad. You can buy good relayers now for \$29.00 a ton. He figured

about 98 or 100 ton to the mile. That is, \$2900.00 a mile for the rail.

They are having ties put on their road at 14 cents apiece, put on the cars. Some sawed ties and some hewed.

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Witness figured ties at 35 cents per tie and 2500 ties a mile, \$875.00. That is the rail, ties and grade. The spiking and fish plates and couplings would probably cost another \$1,000 and the laying would probably cost \$5.00 a station. That would be about \$175.00 a mile to lay it. Then there would be the ballasting. There is no set price on that. It might cost \$100.00 a mile or \$500.00. It is hard to tell. At \$250.00 that would be fair. That would pretty well cover it. The witness put it at about \$8500.00 a mile. He did not figure it down fine. The Lacey timber could come out to Angeles through Lake Crescent.

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A road from 42 to 45 miles long would put it into the center of their holdings. That is twelve miles into the timber. He has not been over there and taken the topography of that country, but you can get a logging road almost any place you want to put it. The elevation to

surmount and the rivers to cross are not very material.

Should not think it would be profitable to go into a place like that without putting in one hundred and fifty million feet of timber a year. Four locomotives would cost \$50,000. 60 miles of rails would cost \$180,000.

Logging cars run all the way from \$400.00 to \$1,000. The cars witness is using cost \$500.00 apiece. That would be another \$100,000. You would need 200 cars. Other necessary items of equipment are donkey engines. It would probably take ten donkeys. They cost from \$3,500.00 to \$4,000.00. Cable and everything for large donkeys would cost \$4,500.00.

He figured that for three and a quarter billion feet in the Lacey holdings, fifteen cents a thousand would build a road complete, twelve miles into the timber. He does not know the prices of logs in Clallam County in 1912 nor in 1914. He heard of some spruce sold there. He didn't look up the price of fir logs in the Washington market in 1912, but thinks they were \$6.00, \$9.00 and \$12.00 in March, 1912 and 1914.

Does not know the value of the Merrill & Ring timber. He thought the two values were about \$1.50; the whole belt in there; that is,

taking the group, taking the Lacey holdings and the Merrill & Ring group.

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He don't see any difference in the prices. That was for fir. He does not know; he hasn't sold much spruce, but has handled quite a bit of cedar. He knew there was a little spruce in those sections. The spruce and the cedar ought to be worth more money. They bring more money than the fir. The cedar and spruce would be worth \$2.00 to \$2.25 per thousand. The hemlock is pretty bad going down there. It ought to be milled there. It is not of any particular value down there. The Merrill & Ring timber was worth about the same, \$1.50. The cedar and spruce is the same as the cedar and spruce in the Lacey timber. In the Mike Earles' tract, same period, fir was about the same.

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He does not see any difference in the spruce and cedar. Very little difference, of any, except the fact that Earles' is on the railroad. Earles has a railroad in there and if the Lacey people operate their timber the Lacey people could have a railroad in there.

Does not believe Mike Earles is getting more than \$1.50 stumpage out of his timber. Could not tell what Earles' timber is worth. He is saying what he thinks. He does not know the exact value. "There is no one knows the exact value of a stick of timber until it is cut."

Re-Direct Examination

The Goodyear and Merrill & Ring timber, situated along the straits, requires a railroad and locomotives and cars and the other equipment detailed in the witness' cross-examination, to log it. It would require as much equipment to log 150 million feet of that timber practically as it would to log the Lacey's, though they might do with one locomotive less.

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In operating along the railroad of sixteen miles, as described by Mr. Thomson, whom the witness heard, he does not think it would require any more equipment than to log the Goodyear and Merrill & Ring timber. You might have to have a little heavier locomotive on your main line. The cost of hauling the logs after you get them to the main line, is very small when you are logging up into the hundred millions. The rails would be used over and over again.

He figured that eighteen or twenty miles of the steel would go into branch lines. It would be used over and over. As fast as a branch was cleaned up he would move it to another branch. He would take the steel and ties up and move them over to another branch. It would not take sixty miles of rail on the main line, which would never be moved. There is a difference in the quality and value of the hemlock in these respective zones. The hemlock, in fact, the timber that stands close to the straits, is more shaky and liable to rot than the interior timber. The interior timber is sounder and less shaky. Along the straits the hemlock is practically worthless until you get back a certain distance from where the high winds strike it. Back over in the valley there is much less shaky timber than along the edge of the straits. It will take in the neighborhood of 300 or 400 miles of branch line railroad to take out the Merrill & Ring timber along the straits, to log it economically. That includes spurs that are taken up and relaid.

It takes a great many miles of railroad to grade and build. The rougher the country the more railroad it takes unless the cost of

yarding is increased. By building more railroad the yarding is made shorter and that decreases the cost of logging. But a level country overcomes a good deal of that. In a level country you can reach further out in your yarding. It would not require more branch road for the same amount of timber on the straits than it would in the interior. It would only require sixty miles of railroad to log the Lacey timber, and witness was talking about starting operations there on the coast. The mere fact that timber is located along the straits contiguous to water, does not do away with the necessity of having railroads. You have to take your logs to a certain point to make economical logging. You have to have a central place to dump the logs into the water.

H. D. NEWBURY:

Direct Examination

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His business is logging, lumbering, saw mill, buying and selling timber, and has been for the past twenty-five or thirty years exclusively in Oregon and Washington. Has had the supervision of logging and lumbering operations and the construction and operation of logging railroads.

Is familiar with the methods of logging in

the Northwest. Is familiar with the cost of logging. Has been familiar with the market price of logs in the Puget Sound market for a number of years. Is familiar with the value of standing timber, some parts of which he has seen, in Western Washington. Has been on some parts of the Lacey holdings. Made a sufficient investigation of some parts of them to form an idea of the conditions attending logging operations in there and the value of that timber. Is familiar with some parts of the lands in the straits zone, range 9 west. Has been down on Clallam Bay. Has examined the county cruise of Clallam County.

Cross-Examination

Examined the lands in August, 1915. Mr. Frost asked him to go down. He went with Mr. Frost, Mr. McGuire, Mr. Riddell and a County Commissioner or two of Clallam County. Went in an automobile from Port Angeles.

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Went into the timber quite a bit. "I was in there about five days, in the timber traveling around through it." Did not particularly make notes as he was not there for cruising. Made a few memoranda for his own benefit. Has not them with him. Put them in a book which

he has not with him. Was in the timber land along the straits a part of two days. Had no cruise with him. Has been down there two or three times before this, but on former occasions did not make any examination of the Lacey timber.

Direct Examination

In making the examination of the Lacey timber he used an aneroid barometer and took the elevations here and there. Carefully studied the physical characteristics of the country in these respective zones with a view to ascertaining the logging cost.

Took elevations with an aneroid up Beaver Creek past Beaver Lake, down the forks of the Pysht and on to Clallam Bay. He took five days, making very careful observations of those things. He observed the character and condition of the country with reference to the possibilities of railroad construction and its cost in going through there, and made investigations of the character and quality of the soil along the Sol Duc valley.

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Went out and traveled around through the timber. Occasionally would count up an acre and measure it by putting a tape line on the

trees and figure them out. Put down no notes of the quality or grade of the timber, but observed it. If the Lacey timber was the same on March 1, 1912, as it is now, it was worth \$1.75 to \$2.00 a thousand stumpage. The timber along the straits is worth the same price. One timber is worth just as much as the other. On March 4, 1914, they would be the same. In stating that price he referred to the fir, spruce and cedar, but not the hemlock.

Cross-Examination

There is no difference in the quality of hemlock in the respective zones. Has never bought or sold timber lands in Clallam County. Went down there about six years ago to buy some land for himself at the mouth of the Hoko River. Has not purchased any lands in any considerable quantity in the last five years, during which time there were but one or two sales that he noted in the papers that he knows of. The largest one was in Oregon. That is the last one. Has not noticed very many and does not think there has been very much done in the last four or five years.

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As to the tendency of the timber market in the last four or five years, if you go to the

holders it would be on a standstill. That is, if you want to buy something, but if you want to operate, it is downward. Has had charge of logging operations, logging railroads in the State of Washington, at Klamath, Eutalla, Yakima, Klamath County, on the Yakima River, and he built some roads up in King County for himself. Examined the county cruises to run over them and see how much the timber runs. He had a map with him all the time.

Was down in the timber there for five days. In the plaintiffs' timber principally most of the time, and he spent some little time down at Clallam. Was in the straits timber parts of two days, down around the Goodyear timber. In going through the timber they stopped for section lines and section corners so as to locate themselves on the map.

In saying that the interior lands have the same value as the lands on the exterior the witness took into consideration the fact that there is a longer haul.

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The greater cost of operating is in the straits' timber. After the plant is in the only difference is that you will operate cheaper on good lands than you will on rough country. Where you are building roads up through

mountains and have steep grades and high cliffs to take off it costs more to put the logs on the railroad after the plant is in. He did not go into all of the Calawa country, some portions of it. Was in townships 29 and 30-12. Went up one branch of the Sol Duc to where the water turns and runs the other way. Was in townships 28-13, 28-14, 29-13, 29-12 and 30-12. Made an observation of all those townships but did not go through each five-acre tract. Went through some parts of it. Took up a few sections here and a few sections there. Witness shows on the map the route he took. Witness says that he did not go into the Calawa country.

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His experience is that after the logging plant is in, the transportation itself does not cut much ice in logging. That is not the expensive part of it after the plant is built. It is the operating, the kind of ground that you have to operate on, and the expense is in the operation itself on the ground. He takes into consideration the upkeep of the road, but overbalances that by the different localities you log in. The upkeep of the road is not the expensive part of it. The expense is in that the timber on the straits is in a rough and broken country and you have to

have steep grades and high points to take your timber off; narrow canyons to build your roads in and every time you fell a tree it will fill the canyon up and you have to dispose of that, and it is expensive in a rough country; while in a nice smooth country you can build an inexpensive road, can work right along and get more logs and do it for a whole lot less money. Did not go into the Mike Earles' timber. Does not know whether the timber in the straits in which the railroad has been built is worth more than where the road was never built, as he was never in that timber.

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He will say that the Lacey timber is worth just as much as the Goodyear timber. It is worth just as much as the timber on the Pysht River. Would make no difference if the railroad was built into it. He believes you can log the interior timber off for less money than you can the straits' timber; that is, the fir, cedar and spruce. He puts no value on the hemlock at all. He does not think there is any. He took elevations in the Calawa country, going up the creek after he left the Sol Duc. The highest point there down in the canyon was 765 feet. He was not down in the Calawa valley, did not get in that far.

Is making his value on what he saw. Is not placing a value on the Calawa timber. In valuing the timber which he had in mind he figured on taking it down to the Pysht or the Clallam. It could be routed either way, and would then tow the logs to market.

He figured to a certain extent in estimating the operating cost. He figured it out on paper but did not make any memorandum.

He figured no other points to which to take the timber than the Pysht or Clallam. He did not figure the route to Port Angeles. He did not take into consideration that both sides of the Pysht were already owned by one company. If told that the water front was already owned it would change his idea of the value of the timber. Thinks it would make no difference whether there was point of access there or not. Could not say what proportion of plaintiffs' lands were level. Has testified to valuations on plaintiffs' lands assuming, not that they were altogether level, but that they were better than the lands on the straits. Does not know what proportion are level or what proportion are rough.

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Has known of no sales in the interior of Clallam County in five years. Has known of

no sales having taken place at a higher figure than \$1.00 a thousand. Has known of a sale four years ago, but of none since then.

Knows of nothing that has taken place in the last five years that would increase the value of timber in the interior of Clallam County.

Re-Direct Examination

The timber on the straits cannot be logged without a railroad any more than the timber in the interior.

Re-Cross-Examination

Did not notice any burns in the timber in the interior. There were some old burns and lots of them. On the way out from Sol Duc valley to Clallam Bay he noticed a very extensive burn. After he got over the ridge and coming down to the straits on the straits side of the summit did not notice any burns to amount to anything.

Re-Direct Examination

In passing from Beaver prairie over into the Calawa he took the elevation of the pass with an aneroid and got 765 feet.

Beaver prairie read about 425 feet. The elevation of the pass was approximately 300 feet higher than Beaver prairie. No, he does not think they were down in the Calawa. They

had been clear over into the Calawa country. Were in sections 10, 11, 14 and 15, down in that country.

The timber of the plaintiffs in zone number 2 was the best I ever saw. It was as good as anybody has. The logging conditions are fine. Does not think persons traveling in an automobile from Clallam to Forks and back up to Sol Duc Springs could form an accurate opinion as to that timber. Unless they went out into it some they could not tell much about it. They could see a little along the edge possibly.

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There might be a little more fire risk in the interior than there would be out on the straits.

CHARLES McGUIRE:

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Direct Examination

Is a timber cruiser, buying and selling timber for Eastern timber buyers, has been for several years. Is familiar with the value of timber in Western Washington.

Is familiar to a certain extent with logging and logging camps and the methods and manner of logging. Is interested in some. Has examined portions of the Lacey holdings in the

interior of Clallam County. Is familiar with and has been over and upon the timber of the Puget Mills & Timber Company, the Milwaukee holdings, the Merrill & Ring and the Goodyear holdings along the straits. The plaintiffs' timber, which he saw in the Sol Duc valley, is good timber of good quality, and good ground to log. Was in the timber shown on the map in Zone No. 3. It was more rolling over there and rougher. Along the straits it is more cut up with ravines and narrow canyons than it is in the interior. He observed the character of the country in the straits' zone and took aneroid readings of the elevations. In a general way watched the character of the soil and the land through these zones to determine the cost of railroad construction. The land in the valley on the Sol Duc, the Calawa and west of the Forks would be agricultural land when it was logged. He heard the testimony of R. H. Thomson in this case.

In taking out the plaintiffs' timber to the Pyhst, or Clallam, on a railroad, there would be very little difference in the relative cost of placing in the water, the straits' timber as compared with the plaintiffs'. On March 1, 1912, the Lacey timber, for the fir, cedar and spruce, was worth \$2.00 per thousand. So

was the straits' timber. He has examined the County cruises and bases his judgment as to the value of this timber on what he saw when he was down there and from his examination of the county cruises.

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Was in the timber practically 5 days. Went from Lake Crescent on the county road, accompanied by one of the Commissioners who had cruised, and run a compass through the timber.

At different places stopped and picked up the section lines and went to the corners so as to be certain of the ground, and took a general look around of the quality and quantity of timber and at one time went between five and six miles from the road. Referring to a memorandum, states that he was on sections 10, 11, 14 and 15, and after crossing the river, crossed into sections 23 and 24, in township 29, range 12.

Says that one riding in an automobile from Clallam to Forks and back up to the Sol Duc Hot Springs could form an accurate opinion of the quality, quantity and character of the timber in the zones.

The Lacey timber was worth the same on March 1, 1914, as on March 1, 1912, and so was the Straits' timber—\$2.00 per thousand.

Is not connected with Merrill & Ring, Milwaukee Land Co., Puget Mills & Timber Co., or with the Lacey's.

A man riding along the road in an automobile could form an opinion as to the character, quality and value of plaintiffs' timber, but not as good an opinion as by going into the timber away from the road in different places.

Cross-Examination

Is not employed by any of the timber companies. In answer to a question put by counsel for defendants—has done some work for a branch company of Merrill & Ring, but for none of the others. Did considerable cruising in Clallam County for the Continental Timber Company—another name of the Milwaukee Timber Company. This was down at Twin River and at the Pysht River along the straits. In 1912 and 1913 he cruised some of the interior timber for the Menachi Wooden Ware Company.

He looked over two quarter sections near Lake Crescent for the Continental Timber Company. In 1912 cruised 120 acres on the Hoko River for Mr. Blacker of Everett.

three months for the Milwaukee Railroad Co.—one tract near the mouth of Twin Rivers and the other on the Pysht. That was straits' timber. The five days he was on the Lacey timber is all he was ever on it. The entire trip was six days. Was on the timber practically all of the time he was in there. Operated a logging proposition in Idaho in 1893, 1894 and 1895. Logged mostly yellow and white pine.

Was engaged in Idaho about fifteen years. The saw mills where he worked had a capacity of from 15,000 to 50,000 a day. Afterwards was with the Blue Mountain Lumber Co. in Washington, in Asotin County. Is now logging near Port Ludlow, Jefferson County. He looked after the cutting of the timber which is being put into the water.

Their railroad is now about 5½ or 6 miles long. Was with the gentlemen who testified before, on the trip over to the interior of Clallam County. They were all together and went over the same ground. Has been over a portion of the county cruises, both before and after the inspection of the timber. Examined them in the Court House in Port Angeles with the assessor and Mr. Riddell and Mr. Frost. Before going in, the Lacey holdings were shown on the map. The witness took different sections, seeing how

the timber averaged, the quality of the timber, and took it from the cruises. Made no memorandum of that. Made a compilation on two sections—31 and 32, township 30, range 12 west. Some one called his attention to it—don't know who. Looked the cruises over at the time and then was on the section personally after he went down there. Don't know if he picked any of the smallest sections at all, just picked them out as he leafed over the book. Did not pay as much attention to the grade as to the quantity. On the sections he examined when he was out there he took a number of them and added them together to see what they averaged, and when he came back he found them on the county cruises to see how accurate the cruises were.

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Has the memorandum and exhibits his book. Section 31-30-12 has 107,885,000 ft., and section 32-30-12 has 107,883,000 ft. Made the memorandum on August 14th, 1915. Exhibits other memoranda made in connection with the examination. When finishing that township witness went through those two sections, saw both quarter posts on both sides of both sections. Counted up different acres and half acres, trying to satisfy himself that the amount

of timber shown in the cruise was on the ground. Made memoranda on section 32-29-13, was at the quarter post between 32 and 5, township 28, range 13. Wanted to be sure what ground he was on and went to the corners for that reason. Gives the distances to the corners.

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The memoranda is scattered through the book in different townships. The book contains all of the memoranda. The first memoranda, shown on the page he read, showing sections 31 and 32, is practically the kind of information shown through the book.

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Made no tabulation of the quantity or grade of the Lacey timber. Formed his opinion of the grades and quality from what he saw. Would take an individual section here and there. Sections 9, 10, 11, 2 and 3 are marked "rough ground," "timber," "rough." They are higher on the mountain. Sections 31 and 32 are level ground. Section 32, shown in the memorandum, has 37,000,000 feet, is marked "rough."

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It limbs down closer to the ground and is not as good quality. Some are marked in the memoranda, "extra good quality." These are

all the memoranda that he made. Can give the amount of timber on four sections together that he was on and looked at. The amounts he cruised substantially agreed with the county cruise. Remembers how sections 31 and 32 grade on the county cruises.

Does not think he could grade any others from the county cruises. Could give his own opinion on the grade.

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When he went down there he was asked to go by Mr. Frost and form his honest opinion regarding the value of the timber. He knew that there was litigation on before he went down there. Only memoranda with respect to the straits' timber was in just comparing the cruises. Has no memoranda in the book, just an opinion comparing the cruises of the county, looking over part of the Lacey holdings, part of the Merrill & Ring holdings and the different grades to see how the timber averaged one tract with the other. Took some ten or twelve sections of the Merrill & Ring holdings, made no note of it, and cannot give it exactly, compared them with what he saw of the Lacey holdings. Could not give the number of the sections, did not count them up. Could tell from his book

the amount of corners he was through and that would show the sections he saw.

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Made no memoranda of the straits' timber, only just looked it over. Just made a comparison from the records. Has been on the Pysht River, through part of the Merrill & Ring timber. Has been through the Milwaukee timber and parts of Earles' timber. As to age—part of Merrill & Ring's timber is a little older than the Goodyear timber and plaintiffs' timber in the interior.

That does not make the Merrill & Ring timber any better as some of it is on the decline. The witness for himself would prefer timber in the interior as for quality because in all timber there is always more or less defect with ground rot, wind shake and dead tops. This is allowed for in the county cruises. He would expect that in Clallam County's cruise they made a reduction for that.

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The straits' timber being on the decline, the witness would prefer the timber in the interior. Some of the timber on the Pysht River and the Goodyear timber is ripe and has been for years. Fir timber grading 48% No. 1, 30% merchanta-

ble, and 22% No. 3, on the log market today is better than timber running 35% No. 1, 42% merchantable and 23% No. 3, but the second timber as graded above may be just as old as the other. Never made any sales of fir, spruce or cedar in the interior of Clallam County and knows of none personally. At the present time hemlock has very little value. The hemlock he saw was very inferior quality and not much of it and it would be hard to put a value on it.

That would apply to timber both on the straits and in the interior. In going into the Calawa River territory, the highest elevation was 765 feet and on the divide between the Sol Duc valley and Clallam Bay the highest elevation is 825 feet.

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The country about Calawa is broken. None of the Lacey timber is on what he would call rugged ground. As to rough ground, did not go over enough of it to pass an opinion. Is familiar with and has been over a part of Mike Earles' timber.

Earles' and Merrill & Ring's timber are worth the same. The market value of Merrill & Ring's timber near Pysht and the Earles' timber per thousand feet was practically the

same thing in both 1912 and 1914. Does not think they have changed any to speak of. Comparing those two with the Goodyear timber, it is about the same.

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He takes into consideration in forming this opinion, the fact that the Earles' timber is now being operated and is upon the railroad. He attached no greater value to the Earles' timber than to the Merrill & Ring's and the Goodyear timber. Witness does not consider it any more valuable than the timber in the interior because there is enough in the interior to justify putting in a road to log it.

At the present time does not consider Earles' timber of any greater value than the timber on the Pysht and the Goodyear timber. Merrill & Ring and Goodyear have much the same facilities for logging as the Earles' timber. In regard to value they are the same. Does not think the railroad adds any valuation to Mike Earles' timber, and on that same basis he figures the lands of the Lacey people in the interior are of equal value to the land on the Straits. The fact of being in the interior without a railroad or in the exterior with a railroad cuts no figure as to valuation in large holdings.

As a general thing the logger puts in his own railroad.

Witness has a memorandum showing the Lacey people have some 41,000 acres. In the witness' judgment, if they had 80,000 acres their tract would be of greater value. The bigger the tract of timber, he thinks, the more valuable it is. The bigger holdings would have the more value.

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After the road was built it would reduce the cost of the road by hauling out that many more feet on the same railroad.

Did not figure the cost of a railroad, but in his judgment, it would be in the neighborhood of from eight to ten thousand dollars a mile. Witness figured on taking the timber to Clallam Bay, which would take about 12 miles of road to reach the edge of the Lacey holdings, so the railroad would cost from \$96,000 to \$120,000. Did not figure the equipment, but formed an opinion. Its cost would depend upon how many million feet would be logged a year.

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To make it profitable on tracts of that size from 150,000,000 to 200,000,000 feet should be logged in a year, taking about four locomotives

and ten or eleven donkeys. He figured in his own mind the cost of railroad and equipment in estimating the comparative value of the interior timber with the exterior timber. 10c a thousand would build the road and pay for putting it in there ready to log three billion feet of timber. That would be the additional cost of putting the road in and logging the timber—that is, 10c a thousand feet.

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That counts the cost of building the road into the tract of timber and figures nothing in addition for equipment, because they would have to have equipment for logging either the straits' timber or the interior timber, and therefore, the witness would not take into consideration the equipment in comparing the value of the interior timber and the straits' timber. The cost of equipment would depend entirely upon the output. On a basis of logging from one hundred to two hundred million a year, four locomotives would cost about \$10,000 each; the donkeys would cost about \$4,000 each; relay steel runs from \$29 to \$30 a ton; ties for logging railroad about .25 to .30 a tie; fish-plates and spikes about \$500 a mile. Was in court when Mr. Chisholm testified on that same

matter and heard his testimony. Is not giving everything he heard Mr. Chisholm testify. He knows practically about what those things cost. Never made any memorandum of it. Has bought logging locomotives.

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If the Lacey timber was a tract of 160 acres instead of 41,000 acres it would not have the same value. A small tract that way is hard to sell except to a merchantable logger and they give you whatever they want to. It is pretty hard to value a tract (small) in the interior. A larger tract of timber is worth¹ more than a smaller tract. He would not care to set a value on a small tract.

Eventually the most economical method of taking out the interior timber will be by railroad to Port Angeles. Didn't figure it close; thinks all of that timber ought to go out by railroad. The price of fir logs varied some in 1912, but was practically the same as it is now. The price was \$6, \$9 and \$12. In the winter of 1911 and spring of 1912, they ran from \$6, \$8 and \$11 to \$6, \$9 and \$12. From March, 1913, to March, 1914, the market has been about the same. Noticed some burns in the interior timber, one west and north of Lake Crescent,

about 15 miles long. There is a burn in the Sol Duc valley. Doesn't know how large. All he could see from the road was not over 40 or 80 acres.

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Observed the burn on the straits, after crossing the divide going into Clallam. There is a burn on Beaver Lake on the side towards Sol Duc. Timber in the Sol Duc valley is on level ground practically free from underbrush and would be very hard to burn. Timber is more subject to fire risk that is on rough and hilly ground. Does not know about the fog belt and rain fall as between the straits and the interior.

Thinks the fog belt extends all over Clallam County and protects the timber, not as much as in the exterior, but thinks they have plenty of fall for fire protection. That would not affect the value. Was at Clallam Bay two nights, did not spend the night in the timber. Spent the time going in and out mostly after night, hardly ever left the timber until it was almost dark. Only one evening went in before the lights were turned on.

Re-Direct

Is very familiar with the character and

quality of timber throughout the State. "It is the best tract of timber I have ever seen."

C. I. WANNAMAKER:

Direct Examination

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Lives at Port Townsend, Jefferson County. Is a logger and merchant. Is chairman of the Board of County Commissioners. Logged on the Hoko River and West Clallam. Put his logs into salt water at the mouth of the Hoko River and in Clallam Bay. Has been a logger in Washington for 8 years. Is to a certain extent familiar with logging methods.

Is familiar with and has bought standing timber in Western Washington and in Clallam County. Recently inspected the plaintiffs' timber. Has inspected and is familiar with the timber along the straits and is familiar with the physical characteristics of the country in the straits' zone and in the interior. Has been across from Clallam Bay over Burnt Mountain near the Sol Duc and around the Forks. Observed the physical characteristics of the country with reference to the possibility of railroads and the character and condition of the soil. In his opinion, the relative cost of placing in the waters of the straits, logs cut from timber in

the straits' zone, as compared with the cost of putting in the water logs cut from timber in the interior is practically the same.

The Lacey timber was worth from \$1.75 to \$2.00 a thousand in March, 1912, and in March, 1914. In his judgment, the straits' timber on March 1, 1912, and March 1, 1914, was worth about the same. Has gone over the county cruises some and is to a certain extent familiar with them.

Cross Examination

The Goodyear property was tributary to his logging operations in Clallam Bay. Operating the property known as the Brach claim, the Thomas Fisher, and around East Clallam.

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He owns some property there at the present time and on the Hoko River, 80 acres that belongs to Mr. Seymour of Tacoma, part of Mr. Talbot's property and a Mr. Johnson's. Has been engaged in logging 8 years. Logged at Clallam Bay 3 years. Cut off five or six hundred acres, about 10,000,000 ft. Did not have a railroad. The farthest back he went was about a mile and a half. That is on the Hoko River, and about three-quarters of a mile back from Clallam Bay. Had no railroad.

At the Hoko River he boomed his logs in Clallam Bay and the same with his logging at Clallam Bay. The cost per thousand of logging these 600 acres varied from \$4 to \$6 a thousand. It cost from \$4 to \$6 a thousand to log that timber. Saw the Lacey timber in August, 1915. Made the same trip as the other gentlemen who testified, made substantially the same sort of investigation. Made no memorandum. Made no tabulations of the Lacey timber as compared with the straits' timber. Investigated the county cruises recently, in 1912 and 1913 with reference to other lands—recently in reference to the lands in controversy in this suit. Examined them in the County Assessor's office just before going over on the tour of investigation. He just looked over the cruise books of certain sections to see how much timber there was in those different sections. He looked over the straits' timber, both in 1912 and 1913, in looking up timber for himself for the purpose of purchasing. He had been through part of Merrill & Ring's timber. Was over it in 1912 and 1913. Did not examine the cruises of the Goodyear timber in 1913.

timber, and the character of the land it was on. After looking over the different sections he went down into the timber, the purpose being to see if the timber had been fairly cruised. Took no memoranda. Did not go back and look at the sheets after he returned, but remembered some of the cruises on the different sections. Does not know how much land he investigated the area of.

Had a map of the lands, colored in green, on the timber tract. Was investigating a good part of the entire tract colored green; that is, drove through it, stopped on several occasions and went into the timber. So far as any comparison is concerned he did that all in his head.

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In 1912 and 1914 he put practically no value at all in hemlock over in the interior or exterior lands. If plaintiffs' lands were taken out of the interior and put alongside the lands on the straits, they would be no more valuable on the straits than they are where they are, on account of the character of the shore-land, getting that timber to the Harbor. There are only two or three harbors along that coast. The Lacey tract and the straits' timber would be practically of the same value if the Lacey tim-

ber were taken out of the interior and placed along the straits' timber in the same relative situation. The timber is practically of the same character and quality and about the same grade. In 1912 and today they are of the same market value as they would be out upon the straits. The fire risk is about the same in each tract. If the straits' timber burned it could not be immediately operated and saved. You have to move that timber to some place where you could hold your logs. You have to put it in something to get them there. You have to put in a logging road.

In the interior timber, in case of a burn, you would put in a logging road if you wished to get it out. The road to the interior would be a longer road—about 18 miles to the Lacey timber from the mouth of the Pysht.

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Would consider the plaintiffs' timber at very little disadvantage as against the Merrill & Ring timber.

The lands of the Pysht are no more valuable than are the lands in the interior where the logs would have to be hauled by a railroad 18 miles long. Does not know of any timber being sold in the interior of Clallam County. Doesn't know of any sales being made there. His judg-

ment of values is not based upon knowledge of any sale of such timber in Clallam County.

Re-Direct Examination

The map shown him is the map that was taken with witness, and which he spoke about. Witness purchased timber lands in Clallam County himself. Witness is asked how the timber compared on that land with the Lacey timber and was objected to.

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Defendants offer to prove that the timber the witness purchased was not as good in character or quality as the Lacey timber and that he paid \$2 a thousand for what he purchased.

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The offer to prove was denied. Speaking of the Lacey timber, the witness says: "It is the best tract of timber that I ever saw."

R. D. MERRILL

Direct Examination

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Lives in Seattle. Is in the logging business and timber and lumber. Plaintiffs concede that the witness is a thoroughly equipped and experienced logger and timber owner and knows all about the value of timber in the State of

Washington. He is a member of the firm of Merrill & Ring, owning an extensive body of timber in Clallam County. Familiar with the timber on the straits, of his own and with plaintiffs' timber.

Is familiar with the characteristics of the country on which the timber stands. In arriving at the value of the timber the elements or factors to be considered are, the cost of operating and the quality of the timber. The cost of operating depends on a number of things, which are the lay of the ground, quantity of timber per acre, character of timber, whether there is water for donkey engines, character of the soil. If the ground is broken it makes a difference in the cost of falling and hauling. If level, is easier to get the logs to railroads and easier to build railroads, less wear and tear on the machinery and cheaper in every way. The value of the timber is a factor and would also have to consider the fire risk.

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Also the amount of timber in the tract. It always costs a good big sum to open up a tract of timber. If the tract is small, it costs more per thousand feet of timber and if it is large it costs much less.

If the timber is surrounded by other timber,

no matter who owns it, that increases the value of the timber. The size of the timber is to be considered. Medium sized timber is always easier to handle than large sized. Very large timber and an uneven stand is less valuable as it is necessary to have machinery heavy enough to handle the heaviest timber and such machinery is awkward to use in handling small stuff. If the stand of timber is the right size and even it can be handled with a Ledgerwood engine and that is more economical than logging with a donkey. Timber located where operations can be carried on continuously can be logged cheaper. If the logging can be carried on only five or seven months of the year the cost is greatly increased because of the fixed cost and depreciation, which are just as great whether operating or not. Very old growth timber is less valuable than thrifty young timber. In falling the old growth timber is more brittle and more liable to break. A smaller healthy tree springs. A heavy old growth tree in falling crushes right through and often breaks the log or splits it. On rough ground in falling timber is difficult to buck; that is, to saw into logs.

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If timber is on a high place and there is a

depression the tree must be blocked before sawed or the ends will pince the saw and you must use wedges to pry the tree apart, which all takes time. Young growth timber holds out a cruiser's estimate much better than old growth. Being an operator the witness has had experience with both kinds because they compare the cruisers' estimates with the results of the sawyer. Operators find that in young growth timber the cruiser's estimates always run better than in the old growth. Old growth timber usually falls short because of the great defects in the old growth timber which the cruiser cannot see from the outside. Few cruisers take an account of this as they have no opportunity to check up the estimates as an operator does.

The straits' timber is good timber. It is old growth principally; there is some young timber but the bulk is old growth. All the ground on the straits is rough. There is some smooth ground, but in characterizing it as a whole it is rough ground. The straits' timber has all got to be railroaded to get it into salt water no matter where it is located. In the straits the construction and operation of a railroad is moderately difficult. Very little of the timber will go direct into the water. It usually has to go around a draw. Has to go to a harbor first

any way, and there are no harbors except at Port Angeles. In the straits' zone the logging branches and spurs are also difficult to put in on account of the roughness of the ground.

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The logging conditions in plaintiffs' timber in Zone number 2, on a large part of that are extremely favorable. The ground is practically level and there is a great deal of gravel in the soil so the railroad tracks can almost be put on the ground without any work at all. In the straits' zone most of the soil is clay, with very little gravel to make a good roadbed, especially in a rainy country. It would be necessary to haul gravel and ballast the road carefully. Where gravel is not in place that is quite an added cost in the building of the road. The timber in Zone 2 is good timber. The poorest timber in that zone is along the wagon road. It is medium growth timber, it is not old growth and not sapling. There are a great deal more defects in the straits' timber on an average. One part of the timber on the Calawa is old, but is not as defective as is the timber in Zone 4. Witness does not know that from personal inspection but from the county cruises, which state that the straits' timber is old and deteri-

orating and the tops are broken. The fire risk in the straits' zone is not as good as in the timber in Zones 2 and 4 to the west, that flat and level country. Timber in a flat country very seldom burns, but on a hillside if a fire gets started it follows up through like it would out of a chimney. The fire risk in the interior is better; not so much danger in the interior. It is a wetter country than the other, too.

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In Zone number 2, as to comparative cost of logging, it is good ground, most of it, and can be logged as cheap as any timber in the state. He thinks it can be logged to cars cheaper than any timber in the Pacific Coast; that is, putting it on the cars ready to haul to market. In Zone 2 there is a little rough ground on the outskirts, as there is in any tract of timber, but the preponderance, he thinks ninety per cent of that belt is level ground. That is nice ground in Zone number 4 there. It is rather level there (pointing), parts of it. Merrill & Ring own a little timber in there themselves. That tract and parts of Zone number 4 will not log as cheaply.

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The North portion of Zone number 4 is

practically level ground. The bulk of that timber is the finest logging show he knows of. It can be logged and put on cars for much less than any timber in the straits. Take an average of the whole of plaintiffs' holdings, including both the Sol Duc and Calawa valleys, the timber can be logged cheaper on to cars than the timber in the straits' zone. Neither the Pysht or Clallam Bay are the right place to handle logs from the Lacey timber, but assuming that they are (which is not true), a railroad can be built from the mouth of the Pysht down to the center of the Lacey tract for less than two hundred thousand dollars and this cost divided among three billion feet would be a little over five cents a thousand as the cost of the railroad.

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In the Pysht tract witness has about seven hundred millions and the cost of building the main line there to open up the Pysht tract would probably be about seventy-five thousand dollars, which would make about six or seven cents a thousand, so that there is practically no difference in the two tracts, it costing no more to build a railroad to open up one than the other. It would of course cost a little more to haul from the interior than it would from the exterior. It is a little bit longer. In Che-

halis County the Polson Logging Company is hauling 25 miles, which is practically the distance to the center of the Lacey tract, and has kept an accurate account of the cost of hauling in every department of the business. Merrill & Ring are logging another tract in Snohomish County where the haul is about seven miles, practically the same as they will have to haul the Pysht tract. The ground is very level only the timber is not so heavy per acre. That is, the timber both in Snohomish and Chehalis County is not as heavy a stand. The 25-mile haul of the Polson Logging Company cost them forty-two and three-tenths cents a thousand to put the logs in the water, which includes hauling and the cost of yarding the logs to the main line.

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By yarding he means switching; that is, the taking of the cars from the logging spurs to the main line. The Merrill & Ring people are hauling seven miles and it costs them thirty-seven cents a thousand for doing the same kind of work, a difference of five cents a thousand between the long haul and the short haul.

That includes the fuel and maintenance of the road but does not include depreciation. Depreciation on the main line of the Lacey tim-

ber would be much less per thousand stumpage than on the Pysht tract on account of the greater amount of timber. Logging on rough ground is much more expensive than on smooth ground. The witness' Company finds that falling on rough ground costs twenty-one cents per thousand and more than it does on level ground. The branch construction on rough ground, according to their experience, costs forty-four cents a thousand and on level ground about twenty-five cents a thousand; a difference of nineteen cents. This comparison is based on two tracts of timber having about the same stand per acre; that is, fifty thousand per acre in each tract.

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Where the stand of the timber is much heavier per acre there is another added saving which is very great and which might make a difference of fifty cents a thousand; that is, if one tract has twice as much timber on an acre as another tract, the one with the heavier stand can be logged for fifty cents a thousand cheaper than the other. For example: A rough tract with a stand of fifty thousand per acre and one with one hundred thousand per acre, the latter would log at least fifty cents a thousand cheaper than the former. The county

cruise shows that the Lacey timber in Zone number 2 ran about eighty-eight thousand per acre. The Ruddock and McCarthy about sixty-six thousand in Zone 4. Zone 3 runs less than Zone 4. He remembers the eighty-eight thousand stand because it struck him as being a wonderful stand of timber. The stand in the Pysht tract is about fifty thousand per acre; the county estimate shows fifty-two thousand and the witness' own estimate is about fifty thousand.

The stand in the Earles' holdings is thirty-nine thousand. The Milwaukee Land Company's timber is a much better tract of timber than any along the Coast, and the Goodyear holdings are about the same as the rest. The timber in the interior is worth fully as much or more than the timber on the straits. As a whole, he knows it is worth more, taking the straits' timber as one tract and the Lacey timber in the interior as another. The Laceys have practically all the fir except the State land and some of the Milwaukee's.

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The Lacey's is a more valuable tract of timber. Merrill & Ring's hemlock is poor, Earles' hemlock is poor and so is most of that on the Lacey tract. Where the hemlock grows

with the fir it does not amount to much. A solid stand of hemlock grows thrifty and is worth considerable money. The witness was interrogated about the conspiracy and denied any knowledge of any such thing.

Cross Examination

Is a member of the firm of Merrill & Ring, owners of a large tract of timber on both sides of the Pysht, owning both sides of the riev'r at the mouth.

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They first began buying land in Clallam County in 1880. Were the first purchasers. They had the pick of the county and bought timber where they thought it was best to buy. Conditions at that time were not the same as now; at that time they were logging with oxen; railroad logging was not known in any part of the country.

Bought a few pieces of land in the interior of Clallam County within five years. Interior timber is worth just as much as that on the Coast. There is no difference in the value; in fact, he believes the Lacey tract and the timber along it is worth more than others is. The timber that they bought recently was all poor quality; part of it because it was in the Pass

from the Lacey holdings to Lake Crescent, which is the way the Lacey timber will come out to Port Angeles in preference to any other port along the coast. Has not been familiar with sales of timber land in the interior during last ten years. Has known of some sales, has heard of them, but does not know any definite figures. Has known of no sales in the interior at a price greater than one dollar a thousand for fir and not known of any on the exterior greater than a dollar a thousand.

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The particular piece in the Pass between the Lacey holdings and Lake Crescent was bought because he thought it was a good piece to own as the railroad would go through there some time and that would make it valuable. Does not think he can hold up any one. If they want to go through there they can whether he bought or not. Just one piece; thought it was a good buy; lay handy to the lake, but other pieces are not extra good timber and are not located particularly well. He bought them cheap. Paid about a dollar a thousand for the old growth fir.

Figured he was paying about a dollar a thousand for the old growth fir. He bought the piling per lineal foot. Did not figure it

per thousand; if he did it would not buy it. Is familiar with the plaintiffs' lands, has been over a considerable portion before they bought them, but not recently except to go through on the road. Was there a month ago and before that in 1900, when he went over two or three sections, went down the Forks and stayed around two or three days.

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He inspected particularly in sections 31 and 32; did not cruise them, simply made a run through to see how they ran. Was there a couple of days. That is his entire experience with those lands except that he has examined the county cruises. The most timber they have owned he has not inspected any more carefully than he inspected the Lacey timber. Looked at the county cruise a few days ago in Seattle.

He gave the county cruises a more thorough inspection and more time in the examination than in examining estimates of timber he was buying. Spent eight or ten hours examining the cruise of the forty-one thousand acres. Did not make a tabulation of the result, but other people have. It is not the witness' custom to make any tabulation of cruises he is inspecting. It is not a custom of any timber man that he knows of. Is acquainted with some

burns in Clallam County but does not know as he is acquainted with every burn there. He supposes he knows the location of the largest burns. There is a large burn on both sides of the ridge running between the straits and the interior. Does not know whether there are any large burns in the interior. The burn there is on a steep side hill and the Lacey timber is not on that steep side hill.

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The fire risk is lower on level ground than it is on rough ground. There is not as large a burn on the straits' side of the summit as in the Sol Duc valley. There is not as much land there and there could not be as large a burn there. He does not know as there is as much timber to burn there. Has made no examination of the plaintiff's timber in the Calawa valley. Knows the ground there is not as good ground as the other. Knows from the county cruises it is not all logging ground. He has examined the elevations carefully on the county cruise. In fixing his idea of the comparative value of the timber he considered the route by which it could be brought out. The timber in the Calawa valley can be brought up the Sol Duc river. The cruiser said that on section 11 there was a good pass from the

Calawa timber up the Sol Duc River and witness looked at the elevations on the county cruise, saw the elevation of the pass and thinks it was 673 feet. It was lower than 700 feet. The elevation of the Calawa River was about 400 and of the Sol Duc about 300, and there is no difficulty at all in going across there. The county cruise showed that there was a good pass to the southeast corner of section 11 on the Sol Duc River. The Lacey timber could go to Port Angeles.

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The proper way to handle that timber is to saw it on the ground and have a mill on Lake Pleasant. Would be a fine place to hold the logs around the mill, plenty of pile ground. Does not know of a more ideal place for a saw-mill than right there. Thinks two small mills would be better than one large one and railroad the lumber to Port Angeles or to the sea. His valuations were not based on that, they were based on taking it to the Pysht River, as he said first, as he was wanted to.

If the timber were milled at the lake it would be worth more. His calculation of the value of the Lacey timber was not based on a terminal rate. It was based on taking the timber through to the Clallam River or the

Pysht. He would not make any difference in his valuation if a terminal rate was not guaranteed in the interior. He did not consider that in making his valuation. His valuation was based on taking the logs to the Pysht or the Clallam. Taking the two bodies of timber being the same value, one remote from transportation and the other close, the value of the remote timber would be as much less than the timber that is close by as the additional haul would cost to get the remote timber to market if the conditions were the same.

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In his calculations he stated what he thought the difference would be between the Pysht tract and the interior timber and the same applies to the Goodyear holdings and the Milwaukee piece and the Earles' timber. The conditions on the Goodyear tract are not as good as Merrill & Ring's. In fact the conditions on the Merrill & Ring timber are better than any of the others in the exterior.

His estimate of two hundred thousand for the railroad to the Lacey tract does not include the equipment of a railroad ready to haul logs. It does not include the branch lines. Two hundred thousand dollars would take the

railroad to the center of the Lacey tract. The real place for the main line is to Lake Pleasant. He figured the length of the railroad at twenty-two or twenty-three miles. It would not make much difference. You could take it thirty miles. It would only increase the cost per thousand about a cent per thousand. The difference is so small you could not figure it per thousand. It would not be considered at all in figuring the cost of operating. His valuation was based on an operating basis. He does not know any other basis to put it on. Is interrogated about a protest made by his company. Is not sure whether they made a protest. Does not know the nature of the protest and could not swear to it. They did not get any relief that he knows of. He believes Mr. Beal or someone told him he had protested. Is not sure whether he did or not. He does know what he protested about. He protested because the interior timber was less than the exterior timber. He doesn't know that he put that in writing or made a formal writing of it, but he was there when the Board convened. Mr. Peters and Mr. Beal were there and the witness protested and will protest until the two are on an equal basis or Merrill & Ring's timber is assessed for less than the Lacey timber. In

the protest that he made against the interior timber being assessed less than others he thinks he was joined by Mr. Earles.

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They have not put any logs in the water yet in the Pysht River. He believes they have cleared a little land.

Has been at the Mike Earles' mill at Port Angeles. Mr. Earles is operating his timber. It is not worth as much as the Merrill & Ring timber. It is not worth as much as the interior timber. The big mill was completed about a year ago. He was there last year.

The mill looked completed but was not in operation. Witness' attention is called to Zone 4 on the map and says that when you get back into the country it gets heavier after you get up in the Forest Reserve, but that the heavy stand of the Lacey timber is on good ground. That is the result of his examination.

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He looked in sections 5 and 6 (pointing), and it looked awfully good to him. It wasn't as heavy timber as sections 31 and 32, which are the best sections in the Pacific Northwest. In fact, he does not know of any better tract of

timber in the Pacific Northwest than this particular tract there on the Lacey timber.

These two sections 31 and 32 are situated similarly substantially with the lands sections 5, 6, 7 and 8 in the northwest corner of Zone 2. The timber in the northwest corner of Zone 4 is not as heavy timber as on the land just across the line of Zone 2. That is all nice level land in there. On the other side of the creek it begins to get more rough. They are not as good so far as facilities for logging are concerned as sections 31 and 32. The witness knows of no lands anywhere that will log as good as those two sections. It is good ground for logging in the upper northeast corner of Zone 4.

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His recollection of the county cruises which he saw three or four days ago is that there is good ground in there for logging. His recollection is that sections 3, 4, 9 and 10, township 29, is good ground. Practically all the ground down there is except where you go out on the edge away from the valley. The Ruddock and McCarthy lands offer a great logging show, a fine logging show. The county cruise shows eighty-eight thousand feet per acre. Such an

average makes it very advantageous. The Ruddock and McCarthy stand averages more per acre than the rest, which surprised the witness because he knew that sections 31 and 32 were so high.

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The cost of a railroad to touch the Ruddock and McCarthy lands instead of stopping at Pleasant Lake would be a very little per thousand. He believes the most advantageous way of handling the interior timber would be to mill it at Pleasant Lake.

That is, right in the heart of the valley, instead of terminating the railroad at Pleasant Lake a cent a thousand would carry it down into the Ruddock and McCarthy lands. That is gravelly soil there and you can build a road for almost nothing.

In 1912 and '14, logs on Puget Sound were a little higher than now. In his judgment logs were higher in 1912 than in 1914. From March, 1912, to March, 1914, there had not been any great demand for logs, a great many camps having shut down. It has been a poor period for logging. The witness is interrogated as to the influence on stumpage of depreciation in the value and lack of demand for

logs and says that timber does not fluctuate as much as logs. It does not fluctuate like the price of logs from year to year, although of course the price of logs has an influence on it. If a man has a tract of timber to sell he cannot sell it as well if conditions are not favorable, but if logs go down a dollar a thousand timber does not necessarily move down that much, but there would be an influence of course. His experience of operating does not show the market on stumpage. The log market might be low, cost of operation high, and the value of stumpage remain unchanged.

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Stumpage sort of goes along on a more even plane, and minor changes in the value of logs does not affect the value of stumpage. There has not been any call during the period of 1912 to 1914 for the opening up of new areas for logging operations, but there has been a tendency to do that. It has been with Merrill & Ring because they have some debts to pay. They would not operate as heavy as they do if they did not have to pay. They have increased their operations what they had to. The operation of the Lacey tract could have been carried on at a profit between 1912 and 1914 at a price

of a dollar a thousand for the stumpage. The witness is sure it could. They have carried on their operations at a profit.

They have carried on their operations and not lost any money on the cost of stumpage both at Grays Harbor and also near Everett. They have not as yet operated on the Pysht, but they have operated in a place where it costs more to log than it would on the Pysht and more than it would cost to log the Lacey timber. One man will make a success of logging and another man will make a failure of it. A railroad such as he has described could have been put into the Lacey timber in the period of 1912 to 1914, two dollars a thousand stumpage paid for the timber and money made on the operation of the timber. That is on the basis of paying two dollars a thousand stumpage and a good deal more could have been made based at a dollar a thousand stumpage. That would be operating it as loggers and paying the owners two dollars a thousand stumpage for the Lacey timber. There would not be any great profit in it, but they would not lose any money.

would go up the Pysht River and go over the Pysht or the Beaver Pass. Could go through to Port Angeles, too. He was over the ground several years ago to see how it laid for a railroad and then thought that that was feasible and since then the Milwaukee has built in there part way to show that it is feasible. He has always expected a railroad from Port Angeles to the Pysht and it has looked feasible by way of Lake Crescent. You can estimate approximately within a few miles the length of the railroad that would be necessary. There are large belts of timber there and a few miles of extra railroad won't make much difference in the cost of a thousand feet. The witness figured there was about three billion feet and that it would be economically possible to put a road in there on that basis. There is a great deal more timber available there around the outskirts of that tract. In fact there is a continuous belt of timber from the East end of the Lacey holdings clear down to Grays Harbor. If a man had twice as much as three billion feet of timber the railroad would cost him half as much per thousand. Taking it the other way, if you decrease the holdings there would come a point where it would not be economically possible for him to build the road.

If there were only forty acres there it couldn't be built. If that was the only forty acres there it would have no value if there was no other timber around it. That would be true if he had perhaps a thousand acres.

You could not tell how many acres would be the minimum. You would have to take it offhand and you could not figure it out. If there were only two or three thousand there, if that was the only timber in that belt, it would not be worth anything, but if there was timber around there owned by anyone else or by the state, it would be worth something. He does not believe you could profitably take out two thousand acres of timber from that place on a 40-mile railroad unless you could use the road for some other purpose of hauling than that timber. The timber would have no market price. The witness' valuation upon the Lacey timber is based on the theory of business. That is the only way you can base values. If a man had a thousand acres of timber and some one built in with a railroad to take it out, the timber would be worth something, but the witness would not go in and buy a thousand acres of timber isolated forty miles from transportation, and no one else would. It might have a

speculative value. If you have to tow that hemlock to the market it is not worth much, but the hemlock can be utilized if you have a railroad and saw it on the ground. Hemlock makes good lumber, but in a heavy stand of fir it is rather defective. You could barge the hemlock from points off the coast to a railroad terminal, but not economically.

Where there is a solid stand of hemlock by itself it grows into beautiful trees. Taking timber graded No. 1, 42%, merchantable, 35%, and No. 3, 23%, that would be more valuable than fir that graded 35, 42 and 23, considering it from the operating standpoint.

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There would not be a great deal of difference. You can figure that out, taking the percentage and the price of logs. To get it definitely you would have to figure out the value of the different grades of logs. The first figures wouldn't be very much better; it would be better, but that can be figured out. The higher the grade the more the logs are worth, but not the more valuable the stumpage is. That does not follow the trees as stumpage but the logs would be worth more. If the assessor's books show that the Merrill & Ring graded 42, 35 and 23, and the Clallam Lumber Company

timber the hemlock would be of value. The the Merrill & Ring tract would bring more money in the market.

Re-Direct Examination

In making estimate of the cost of railroads he charged the whole cost of railroad construction up to the timber. He allowed nothing at all for salvage. The ties would be worth nothing. The steel would be worth considerable. In putting in that road he would buy relayers instead of new steel.

Page 386—

It is as good as new steel, and he figured the cost of the railroad on new steel, which is considerable more than the steel he would buy if he were building the road. In valuing the timber graded 35, 42 and 23, the logs from sider milling the timber at Pleasant Lake.

With a mill for the manufacture of the timber on his direct examination he did not con- most economical method of handling the Merrill & Ring timber is the same way; that is, by milling. Merrill & Ring's hemlock is as good as the Lacey hemlock, though he did not look at the percentages between the Merrill & Ring and the Lacey hemlock.

There has not been much demand for stand-

ing timber in tracts large enough to constitute a desirable operation since 1912, but they charge you pretty nearly as much for it as they did at any time when you try to buy one. The witness has offered to purchase a number of tracts and the offer has been refused. They have made offers to buy a tract in Chehalis County, which is 25 miles or more from tidewater and the route to get there is more difficult than to get to the Lacey timber. It is more difficult and fully as long.

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The witness offered \$2.50 a thousand for it and that offer was refused. That was this year.

But a year ago, before the war he thought more of timber and was more anxious to buy than at the present time. They have been negotiating for that timber for the last seven or eight years, but have never been able to buy it. It is a nice tract of timber on rough ground, contains about 11,000 acres with about seven hundred million feet of timber. There is just about as much timber as on the Ruddock and McCarthy tract, is much more difficult to log and would cost just as much to get to the market as it would to get the Ruddock and McCarthy timber to the mouth of the Pysht. The road

which would have to be built to that timber would have a grade much in excess of the grade to the Sol Duc valley .

Page 388—

The tract of timber which Mr. Polson referred to in his testimony the witness bought of Mr. France and paid him over three dollars a thousand for it. They have bought in that vicinity, farther from the market than that, at least a billion feet of timber and have not bought any of it in the last three or four years for less than two dollars a thousand. They have bought different tracts and paid over two dollars a thousand for it within the period since 1912.

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They bought a tract from the E. K. Wood Lumber Company, on which there was five hundred million feet of timber and paid in excess of two dollars a thousand for that. It is in township 21, range 9, in Chehalis County, in the same belt as the Lacey timber, in the Olympic Peninsula belt of timber. It is 25 miles or more from salt water. It would be logged by railroad after you built the road. There wasn't any railroad in there when they bought it. That was in 1912.

That timber is in the north end of township 21, range 9, and can be delivered in water in the middle of township 17, north, and the road will be over 25 miles long.

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In regard to the France timber, they first made an offer to log it for him, then they offered him \$2.50 a thousand this Spring. They offered it to the witness on terms.

It was a purchase of the timber which they would own to hold for future operations.

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They did not make France an offer of \$2.50 a thousand until this year. Before they had made offers to log it, but they have been trying to get a price and could not get a price on it. There is a place at the mouth of the Pysht River which the witness is willing to let the plaintiffs use and give them a right of way for a private road of their own. He has been trying to improve the mouth of the Pysht and has had an expert down there for some time to see if that is feasible.

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The witness figures it will cost about two hundred thousand dollars to improve the mouth of the Pysht. Clallam Bay is available to the

plaintiffs, as at the present time the Goodyear people are logging there and are building a booming ground on a piece of ground which the witness owns and gave them to use at a nominal rental.

When Merrill & Ring commenced buying in Clallam County they did not know of the existence of the Lacey tract for some time. At that time people did not log back more than two or three miles from tidewater because the only means of logging was with oxen and it was impractical to go more than a mile or so from tidewater to get logs. Railroad operation was not known.

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About 1892 Merrill & Ring sent some men over into the Sol Duc valley, found this body of timber and tried to locate it, putting settlers in there, but were unsuccessful because the Government turned them out. He is 46 years old, has been in the lumber business since 1893 and has been in the State of Washington since 1898.

The reason he testified that the Lacey timber and the straits were of equal value was because he wanted to be on the safe side. The cheapness in the cost of logging the interior timber

and the difference in the quality of the timber would be more than offset by the difference in the cost of hauling across that Divide. He looked over the estimates as carefully as possible, treated it just as he would if he was going to buy a tract of timber, figured on the safe side and left a margin in favor of the Lacey timber in his statement.

Re-Cross Examination

Merrill & Ring proposes to utilize the mouth of the Pysht River in their operations and are afraid they will have to spend two hundred thousand dollars. They will log about one hundred million a year. That ground suitable for logging could be increased, if necessary. If building a mill there, would probably have to make about the same amount of excavation to get booming ground for the logs for the mill. If Merrill & Ring could build a mill at the mouth of the Pysht they would do it. Their finances will not allow them to do that at the present time. They intend to build a small mill to manufacture the hemlock.

N. I. PETERSON:

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Direct Examination

Is a logger. Has been for about 20 years.

Is now logging at Dungeness in the east end of Clallam County. Has logged in the State of Washington about twenty years. Has been in active supervision of logging operations during all that time. Has bought timber and timber lands in this State and in Clallam County but has not sold any. Is familiar with the market price of logs and of timber and timber lands.

Has driven through the Lacey holdings. Has looked over the county cruises of that tract to some extent. Witness' logging operations are carried on in township 30, range 4. That is near the extreme east end of Clallam County. Witness' timber is fir, cedar and hemlock of rather a poor grade. Their timber runs about 5 to 10% No. 1, possibly 40% No. 2, and the balance No. 3. From what he has seen of the Lacey timber his own does not at all compare with it. His own is a poor grade of timber and what he has seen of the Lacey timber is good.

The timber in the west end of the county is worth double what it is in the east end. The plaintiffs' timber in Zones 2 and 4 on March 1st, 1912, was worth \$2.00 a thousand, for the fir, cedar and spruce. Witness has bought some for one dollar a thousand and some for two dollars a thousand in the east

end of Clallam County. The market value of the Lacey timber on March 1st, 1914, would be two dollars a thousand.

Has seen a very small portion of the Good-year timber but has never seen the Merrill & Ring timber, nor Michael Earles' timber.

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Has skipped through the county cruise of the straits' timber. In his opinion the market value of the straits' timber on March 1st, 1912, and March 1st, 1914, was two dollars a thousand.

Cross Examination

He lives at Dungeness. Has lived there for six years. He commenced operating immediately after he got there and has been operating continuously except at small intervals when they were closed down.

They have logged probably six or seven thousand acres. They log into a little lagoon in Dungeness Bay, railroad their logs as high as 10 miles back; the railroad was there when they came there. They bought the whole operating outfit. It was not in operation. With the exception of a few months in 1911 or 1912 logs have been about six, eight and eleven. The market has been practically the same from

March, 1912, to March, 1914. He went through the Lacey timber in July of this year with his wife, son and another family. They had two automobiles and went through for a trip. His attention was not directed to the Lacey timber. He did not go there to investigate it but simply on a pleasure trip. Has never been through at any other time. Does not know where the Rud-dock and McCarthy land is.

On it being shown him on the map recognizes it and says he has never been through that timber except on this same occasion. Was in court when the other timber witnesses for the defendant testified and heard them testify. He doesn't think his examination of the county cruise was any more in detail than that of the other gentlemen. Did not look at the county cruise with the other witnesses. Looked at that the first time at the Court House in Clallam County.

He expected at that time to be a witness in this case. He did not look over the Lacey timber any more than the other timber. He knew that some of the timber he looked at was Lacey timber. They told him it was. Made no tabulated statement of it.

on any particular page, took no notes. That was all the examination he made. Made the same examination of the straits' timber on that occasion. He was an hour or so, not over two hours in doing that. He doesn't think he examined the whole bunch of the timber, he did not go through the whole book. He would not buy the timber on the examination he made. He did not base his testimony about the market value of the west end timber on any sales, he based it on the body and volume of the timber there was in there. There is a great deal of timber in there in large tracts.

He does not know of any sales in the lands of the Lacey timber. Has not known the Lacey timber as much as five years. Is not in touch with the sale of timber lands in the west end of the county. Does not know of any sales that have occurred there in the last four or five years. Doesn't know of any sales in the west end of the county. In his opinion the hemlock in the west end is worth from 25 cents to 30 cents a thousand. Did not examine as to how the sections ran in respect to hemlock. Made no examination of the cruise as to the hemlock.

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They have some hills, not very steep hills.

The country is level until they get up into the foothills. They have 10 or 11% grades on it, on their branch or spur lines. They have 5% grades on their main road going in with empties but not coming out. It is good country for logging.

Re-Direct Examination

The ground he was on in the interior in the west end of Clallam County was good ground. He saw some rough land but did not see any timber on it. He is asked to compare his own logging show with that he saw on the lands of the plaintiffs, and witness says plaintiffs' lands are more favorable. He is logging land containing from fifteen to sixteen thousand feet of logs to the acre and over there there is a great deal more. There would be four times that in some places. The thick timber is more favorable for logging operations than his own.

Re-Cross Examination

He took observation at the time he went through the Lacey timber with a view of telling whether those lands were good for logging.

He was not down there to make any investigation. "I have been in the business a good many years, and whenever I go into timber I most generally pay some attention to it, always

do." He saw more than simply from the automobile road. He stopped and went into the timber a short distance off the county road; could not tell where it was or whose timber.

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Whenever they camped sometimes they would look around a little. He could not tell from the map where he camped.

S. A. WALKER:

Direct Examination

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Witness is a civil engineer. Has had 14 years' experience, four years experience in surveying, laying out and constructing logging railroads.

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Has been employed by the Northern Pacific Railway Company, the Milwaukee Company, the Copper River & Northwestern and the Spokane & International. Has been employed by Merrill & Ring. Has surveyed a railroad route from the mouth of the Pysht up the Pysht and across what is known as Beaver Pass. Thinks you can get a 2% grade from the summit to the Pysht in a distance of 11 miles. There were no unusual conditions or obstructions

which would make that railroad costly. Did not get a detailed estimate, but has an opinion of the cost. Thinks \$5,000 on the subgrade and \$6,000 above it is the highest cost; that would make \$11,000 a mile, using 60-pound steel. Investigated a route for a road from the summit on down to Sol Duc. Believes you can get a one per cent grade from the summit to the cross roads below Sapho, the junction of the county roads.

The cross roads (indicating on the map) is about the center of the tract. A railroad from the Pysht 11 miles to the summit and 7 miles to the cross roads would be 18 miles or \$191,000, with a maximum degree of curvature of 15 degrees. That curvature and grade can be easily operated.

Cross Examination

The road he was working on came out at Pysht. The summit of the Pass is in the center of the southwest quarter of section 35 and he followed right down the county road to the quarter corner between sections 26 and 27.

The terminus of the road on the north was Pysht and on the south the cross roads, a little below Sapho, and east of Lake Pleasant.

Re-Direct Examination

In making his estimates of the cost of this

railroad he used 65-pound steel to the yard. That would make hardly as good a road as a common carrier would use because the logging road does not need to be that good.

Page 396—

He made this investigation for Merrill-Ring Lumber Company, and has been in there the last two summers; six months the first summer and four months the second summer.

R. W. REMP:

Direct Examination

Vol. 2, page 400—

He has made a survey for a logging road from the summit of the Pass down to the mouth of the Pysht. Has found it possible to construct a railroad on a working grade of 4% in favor of the load down to the mouth of the Pysht on an 8.2 mile line. By lengthening out that line two miles they could reduce the grade to less than 3%. From the summit down to the Sol Duc he could run a 4% grade straight down the valley. The summit is in the southeast quarter of Section 35, township 31, range 12, at an elevation of 797.5 feet. The elevation of the cross roads at Sapho was 452 feet, making a difference of 327 feet, which would be less than a one per cent grade. He terminated his

survey on the cross roads where the Sol Duc road meets the road to Clallam.

He believes the timber could be taken care of from that point. They could probably put their spurs out from there without any disadvantage.

Cross Examination

He has built railroads; was superintendent of the R. R. & N. railroad from Tillamook to Buxton, a logging road one hundred miles long. Built that from 1908 to 1910. Was assistant to Mr. Cook of the Northern Pacific Railroad for four years.

He is the Assistant Chief Engineer of the Northern Pacific now. Witness had charge of construction work under him; had actual charge of the work about two years and a half. He moved the bridges at Grays Harbor; made the line changes which were made down there which was considered the heaviest piece of construction on Grays Harbor.

Page 401—

He moved the bridges on the Grays Harbor branch of the Northern Pacific Railway under traffic and put in the steel that is there now .

Direct Examination

This road to the Pysht included earth work,

road boxing, curbing, clearing, burning. The clearing was 40 feet and the break 20 feet wide on an average. That's about the ordinary method of railroad construction. The right of way 20 feet wide. He has the whole thing totaled and averaged. He made a written report on it which he presents. His total estimate up to the sub-grades for the 8.2 miles for 60 pound steel was \$47,518.58, an average of \$4715.58 up to sub-grade. Average cost per mile for 56 pound steel from the top of the hill down to the mouth of the Pysht River \$10,351.17, and the average cost for 65 pound steel is \$11,610.94. That would construct a road as well as the average main line common carrier railroad. From the summit down to the Sol Duc the figures above given would take care of it, but that average would be way high. The total distance from the mouth of the Pysht on this line by his survey would be 14.83 miles and the total cost of that road with 65 pound steel would be \$173,000. On such a road the maximum degree of curvature would be about 15 degrees, and he believes he could reduce that some.

Cross Examination

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From Sapho down to the lower end of Lake

Pleasant would be about a mile and a half and to about the heart of the holdings about $6\frac{1}{2}$ or 7 miles. That's about the middle of the Rud-dock and McCarthy lands.

J. E. FROST:

Direct Examination

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Lives at Seattle. Is a logger. Was a member of the State Board of Land Commissioners from 1907 to 1912, during which time he cruised and appraised and sold many tracts of timber land in this State.

On July 1st, 1912, was a member of the State Capitol Commission and as such cruised and appraised about 100,000 acres of timber land in Western Washington, of which about 27,000 was in the West end of Clallam and Jefferson Counties. From 1905 to 1912 was a member of the State Board of Tax Commissioners, in which position he was brought in contact with timber conditions and timber values in Western Washington. In the early history of the Tax Commission started to thoroughly investigate the assessment of property in this State.

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They made an exhaustive investigation of

the assessment of timber lands in the various counties and entered upon an earnest campaign for the cruise of timber in this State which resulted in cruises by the various counties of the timber lands within their borders. The Tax Commissioners also assessed the Public Service properties.

They comprise a majority of the State Board of Equalization and assess the Public Service properties in the State which by law are equalized in the various counties at the same proportion of their actual value as the general mass of property within that county is equalized. It therefore becomes necessary for the State Board to ascertain the ratio of assessed and actual value of the properties in the counties within which such Public Service property is situated. A member of the State Board has the power to subpoena and compel the attendance of witnesses. A great many witnesses were examined throughout the State of Washington as to the market value of property. The witness conducted these hearings and examined under oath men who were qualified to testify to the value of timber lands. Witness held those hearings personally in Clallam County.

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Has been in the logging business for about

three years, during the last two years in active supervision on the ground and in the field, with actual superintendence of all the principal logging operations, including the marketing and selling of the logs. Is secretary and manager of the Cedar Lake Logging Company, operating partially in the Cedar Lake water shed and partially in the Snoqualmie water shed. Is constantly building logging railroads; had a force of men constantly engaged in doing that under his own supervision. Was in the employ of the Frost Lumber Company in Pennsylvania many years ago, where he supervised the construction of logging roads and other railroads down through the Allegheny Mountains.

Page 405—

In his boyhood days was in the employ of the Pennsylvania railroad for two years as civil engineer in charge of railroad grading and in charge of the track laying on the Ridgway & Connellsville Railroad. Also worked as civil engineer on the construction of the Buffalo, Rochester & Pittsburgh in Pennsylvania. In this State has become familiar with all the commercial timbers of Western Washington, which are, principally, in their order of importance, fir, cedar, spruce

and hemlock. He logs from five to seven million feet a month and has marketed all of his company's output at all times. He knows the prices of logs during the last two years or two and a half years. Heard the testimony of Mr. Polson.

Page 406—

His recollection is that Mr. Polson testified that a large portion of the hemlock would be used in logging operations, and such as could be salvaged would be worth a dollar a thousand stumpage, as hemlock lumber has the following commercial uses. Clear hemlock is largely used in siding and finishing lumber. It has a market in the extreme East where they are familiar with hemlock. Ordinary grades of hemlock are largely used in the manufacture of boxes, particularly all boxes for the purpose of containing materials which absorb odors or flavors, as it is odorless. There is a very good market for hemlock. The price of hemlock logs has increased in the past three years. About three years ago our hemlock was sold at a No. 2 fir price or slightly under that; that is, from five to five and a half a thousand. During all his logging operations last year he sold hemlock for \$6.75 a thousand and is now receiving \$6.50 for hemlock logs.

His hemlock and spruce are sorted separately. The inferior grades of spruce are largely used for the same purposes as hemlock and they ordinarily sort and sell their hemlock and spruce together. This year they have built and rebuilt six to eight miles of railroad in their logging spurs and getting on their lands.

They log between twenty and thirty acres to one landing. Those logging spurs and landings are built over and over again. They have possibly built ten miles this year, and is using hemlock ties altogether, which are hewn upon the ground. The defective hemlock is used to build landings on which the logs are hauled to put them on the cars. There has in the past two years been a very active market for hemlock. Their hemlock has had a much more ready sale than fir; that is, hemlock and spruce, and spruce logs are higher now than at any time since three years ago. The witness' main line is approximately seven miles with spurs going out into the various logging operations.

The greatest maximum curve on his road is 18 degrees. They have one grade of 3.5%. They have miles which average 5.6% the whole dis-

tance. The 5.6% grade is compensated or flattened on the curve and steeper on the tangents or straight lines.

The witness is moving over that road now from forty to fifty standard carloads of logs per day and operates his main line with one locomotive. In the timber which he purchased they have an unusual percentage of hemlock and in the year 1914 marketed approximately nine million feet of hemlock. It was the most profitable timber he logged last year. They operated last year a log dump in the City of Seattle where his hemlock was all dumped into salt water, rafted and towed from Seattle to Anacortes and Bellingham to large box factories to whom the hemlock was sold. This is a tow fully as far as from the mouth of the Pysht to Anacortes or Bellingham. Is now dumping his logs in Everett. Last year he paid \$1.60 a thousand to the Milwaukee to haul it to Seattle and this year they made a rate of \$1.40 to Everett, which is twenty cents cheaper although a longer haul.

Cross Examination

Page 409—

The rate to Seattle was \$1.60 a thousand and the minimum load was 7000 feet per car. The logs were small and frequently under mini-

num, so that the actual freight cost at first was \$1.72, and the rate to Everett with a maximum of 6500 to the car was fixed at a rate of \$1.40. The Everett line was a branch line and the Milwaukee preferred to handle the logs over it rather than on the main line of the Transcontinental. The \$1.60 rate was for a 40 mile haul and the \$1.40 for a 59 mile haul.

Has not recently been engaged in any other logging operations than the one on Cedar Lake. Has made no other purchases. Has purchased one hundred and eight million feet of timber from the City of Seattle on competitive bids. Some of his logging operations consist of cutting trees on the slope of Cedar Lake and bringing them down to the water. Some places he cuts back two miles from the lake.

Page 410—

He built the whole line of railroad from Cedar Falls to Cedar Lake, 4.37 miles of railroad, and put it in complete for operation, with unusually severe specifications, for \$3,750 a mile. The City on this portion furnished the steel, fastenings and ties. There is approximately three miles of the remainder which is his own road, built with his own steel. His purchases from the City are only about one-third

of his operations, he having others under contract from the Weyerhaeuser Lumber Company. The railroad he talks of was built by the Cedar Lake Logging Company under contract with the City.

He pays the City for his timber as they take it off, actual log scale, on a monthly settlement basis. Is carrying no risk so far as the ownership of the timber is concerned. Does not think the hemlock he is taking out is better than the usual grade of hemlock.

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Some of it is pretty good and the larger portion of it is what is called low ground hemlock. The hemlock that grows in low, swampy ground, as a rule, is hollow butted, heavy, ususally not clear, and the limbs grow closer down. The upland hemlock, growing on gravel soil, is better, taller, straighter and smoother, and not so inclined to have ground rot.

Does not think he is getting better than the regular market price for hemlock. Has no special advantages over other loggers. His opinion as to the value of hemlock is formed from many considerations. Has made a thorough and comprehensive study of all phases of the lumber and logging business in the Northwest.

Does not know of any sales of hemlock

except his own from his own personal knowledge.

Page 412—

Witness' fee in this case is partially on contingent basis.

Page 414—

In the event the defendants are successful in this suit his fee is to be twice as large. The witness' logging operations are 47 miles from Seattle, 40 miles by the Milwaukee and 7 miles by his own logging road. In a direct line it would not be so far.